



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MNSD, MNDC, FF
 Tenants: MNDC, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants only.

The parties had been scheduled for a hearing, with a different Arbitrator, on October 1, 2013 based on the tenants' Application for Dispute Resolution only. At that hearing, both parties attended and were represented. In that hearing the landlord's agent requested an adjournment. The adjournment was granted and the new hearing was set for November 19, 2013.

At the reconvened hearing the landlord informed the Arbitrator that they had since submitted their Application for Dispute Resolution and a hearing had been set with me for January 20, 2014 to hear the landlord's Application. The first Arbitrator then wrote a decision on November 21, 2013 joining the tenants' Application with the landlord's Application to be heard by me on January 20, 2014.

As the landlord and their agent had attended both of those hearings and the January 20, 2014 hearing call information had already been provided to the landlords I find that they were sufficiently notified of this hearing and the matters to be addressed at this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of rent; for double the amount of the security deposit; and compensation for no heating and for

no use of laundry services for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlords provided a copy of a tenancy agreement into evidence signed by the parties on August 14, 2010 for a month to month tenancy beginning on September 1, 2010 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The tenants submit that rent was reduced to \$850.00 when laundry was restricted to once per week.

The tenants submit that they had, in a previous hearing, reached a settlement that the tenancy would continue until August 31, 2013 but that due to constant harassment from the landlords they moved out of the rental unit on August 3, 2013.

The tenants seek compensation in the amount of \$4,200.00 as follows:

- \$900.00 – the tenants submit that when they moved in to the rental unit the landlord charged them, in addition to the first month's rent and security deposit, the payment of the "last" month's rent. The tenants seek the return of this money as they state they have paid rent in full for the full tenancy;
- \$900.00 – for the return of double the amount of the security deposit. The tenants submit that they provided the landlord with their forwarding address in writing on July 31, 2013;
- \$1,300.00 – for the return of pre-paid rent for the months of August and partial September 2013. The tenants submit that they paid these amounts in May 2013. The tenants submit that because they moved out of the rental due to the landlord's behaviour prior to the expected end of the tenancy they should be able to recover these funds;
- \$1,000.00 – the tenants submit that they had no heat in the rental unit for the entire last year of the tenancy and that the landlord refused to correct the problem;
- \$100.00 – for loss of use of laundry in the last month of the tenancy. The tenants submit that the charge is equivalent to \$25.00 per week.

Analysis

In the absence of the landlords or their agents I dismiss the landlords' Application for Dispute Resolution without leave to reapply.

In relation to the tenant's claim I make the following findings:

- \$900.00 - last month rent.
 - Based on the undisputed testimony of the tenants I find the tenants have established they were required to pay the last month's rent at the start of

the tenancy, contrary to the *Act*. I therefore find the tenants are entitled to the return of this payment;

- \$900.00 - doubles the security deposit.
 - Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.
 - I accept the tenants' undisputed testimony that they provided the landlords with their forwarding address on July 31, 2013. As such I find the landlords were required to either return the deposit in full or file their Application for Dispute Resolution no later than August 15, 2013. The landlords filed their Application on October 18, 2013. I therefore find the tenants are entitled to return of double the security deposit.
- \$1,300.00 – August rent (\$850.00) and partial September rent (\$450.00).
 - I accept the tenants' undisputed testimony that they had pre-paid the rent in May 2013 including for the months of August and September 2013. Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.
 - Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
 - As the tenants had agreement with the landlords that they would vacate on August 31, 2013 and the tenants have provided no evidence that they had provided the landlord with a written notice of a breach of a material term of the tenancy I find the tenants cannot end their obligation for the payment of rent until August 31, 2013.
 - As such I dismiss the portion of the tenants' claim seeking the return of August 2013 rent. I grant the tenants return of the pre-paid partial rent for September in the amount of \$450.00.
- \$1,000.00 – no heat in rental unit for the last year of tenancy.
 - Based on the tenants' undisputed testimony I accept the landlord failed to provide sufficient heat in the rental unit for the last year of the tenancy. I am not satisfied that the tenants have established the value to be \$1,000.00. In the absence of this, I grant, pursuant to Section 67 of the *Act*, compensation in the amount of \$200.00 as a nominal award.
- \$100.00 – no laundry services for the month of July 2013.
 - While I accept the undisputed testimony of the tenants that they were not allowed to use laundry for the month of July 2013 I find that a loss of

\$100.00 is not substantiated and grant the tenants a nominal award of \$30.00.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,480.00** comprised of \$1,350.00 rent to be returned; \$900.00 for return of double the security deposit; \$200.00 for lack of heating and \$30.00 for loss of use of laundry for the month of July 2013..

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 27, 2014

Residential Tenancy Branch

