



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover double the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served in person to the landlord's agent on April 29, 2014.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to recover double the security and pet deposits?
Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenants testified that this tenancy was due to start on April 01, 2014. Rent was agreed as per the terms of the tenancy agreement at \$1,500.00 per month due on the 1st day of each month. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 on March 22, 2014. The tenancy ended on April 02, 2014 and the tenants provided their forwarding address in writing to the landlord' agent on April 06, 2014.

The tenants testified that they asked a friend to view this trailer as the tenants were working away. The tenants' friend informed the tenants that the trailer could be made livable; however, as the present tenant had a lot of belongings and pictures on the walls it was hard to tell the condition of the unit. The yard was also covered with snow so could not be assessed as to its true condition at that time. The tenant RB testified that he went to the unit on April 01, 2014 to begin to move in. He found the landlord's caretaker at the unit along with another person and they were still cleaning the unit. RB testified that he walked around the unit and yard and found it to be in a very poor condition. The landlord's caretaker informed RB that he would have to pay the rent to the landlord first and then could gain possession of the unit at 2.30 p.m. when it would be ready.

RB testified that the landlord had asked RB to pay the pad rent of \$388.00 to the management company for the park. The tenants did so and discovered that the landlord had been behind with the pad rent and had also incurred late fees which were outstanding. The management company of the park informed RB that the landlord's trailer was in danger of being evicted from the park. RB testified that he paid the pad rent of \$388.00 and transferred \$1,100.00 for the balance of the unit rent to the landlord's account. RB testified that he returned to the unit and found there was a broken washer in the yard along with broken glass, cigarette butts, and a couch on the back deck, there was garbage everywhere and a large amount of dog feces. The landlord was supposed to provide the tenants with secure storage; however, the storage shed in the yard was full of junk and the back fire exit of the unit was also piled up with junk. Inside the unit RB testified that he saw holes in the walls which had previously been covered by posters, there remained some of the previous tenant's belongings, there were two or three missing cabinet doors, there were missing handles from doors, the unit did not have a washer as agreed with the landlord, the unit required repainting and was a serious state of disrepair and had not be cleaned satisfactorily.

RB testified that the landlord has also informed the tenants that this was a quiet area; however, each time RB was outside the unit the neighbour's dog barked incessantly. RB testified that he left at that point and returned the next day to find that the caretaker had vacuumed the unit and wiped down some of the interior of the unit; however, the damage in the unit had not been repaired and the yard debris remained. The tenants testified that the landlord's agent would not do a move in condition inspection with the tenants but rather informed the tenants that the landlord would do an inspection a week later.

The tenants testified that due to the landlord's non compliance with the *Act* with regard to providing a rental unit fit for occupation the tenants wrote to the landlord and informed the landlord that the tenants would not be moving into the unit. The tenants also requested the landlord to return the rent paid and the security and pet deposit. The landlord had not provided an address for service, despite frequent requests from the tenants. As the landlord had not provided an address for service the tenants served the documentation and evidence for this hearing to the caretaker as the caretaker had been acting as the landlord's agent .

The tenants testified that the landlord has failed to return the security and pet deposit of \$1,500.00 within the 15 allowable days and the tenants seek to recover double the security and pet deposit to a total amount of \$3,000.00. The tenants also seek to recover the rent paid for April, 2014 of \$1,488.00 and the \$50.00 filing fee paid for this application.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants' documentary evidence and sworn testimony before me.

I refer the parties to s. 32(1) of the *Act* which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenancy agreement states that this tenancy was due to commence on April 01, 2014; however from the undisputed testimony of the tenants I find the rental unit was not ready for occupation on April 01, 2014 or on April 02, 2014. Consequently, I find the tenants are able to end the tenancy and find alternative accommodation due to the condition of the rental unit and yard, the lack of a washer or storage shed as agreed and the general disrepair and unclean condition of the unit and yard. It is therefore my decision that the landlord breached s. 32(1) of the *Act* and the tenants are entitled to recover the rent paid for April, 2014 of **\$1,488.00** pursuant to s. 67 of the *Act*.

With regard to the tenants' security and pet deposit held in trust by the landlord; I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security and pet deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on April 06, 2014. As a result, the landlord had until April 21, 2014 to return the tenants' security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security or pet deposit and has not filed an application for Dispute Resolution to keep the deposits. Therefore, I find that the tenants have established a claim for the return of double the security and pet deposit to an amount of **\$3,000.00** pursuant to section 38(6)(b) of the *Act*.

As the tenants have been successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Return of rent paid for April	\$1,488.00
Double the security and pet deposits	\$3,000.00
Filing fee	\$50.00
Total amount due to the tenants	\$4,538.00

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,538.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court 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: August 06, 2014

Residential Tenancy Branch

