



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, SS, FF

Introduction

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

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on August 20, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. As the landlord was served by registered mail the tenant withdrew their application for Substitute Service.

The tenant appeared, gave sworn testimony, was 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

- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this tenancy started on April 01, 2012 for a fixed term of one year. The tenancy continued until July 09, 2013 as a month to month tenancy. There were six tenants renting this property from the landlord at a monthly rent of \$3,600.00 due on the 1st of each month. The tenants paid a security deposit of \$1,800.00 on March 12, 2012. Two tenants are named on the tenancy agreement and the other tenants are named on the addendum to the tenancy agreement. All six tenants have signed this addendum along with the landlord.

The tenant attending the hearing filed this application on behalf of all six tenants and testified that they had signed the tenancy agreement and a few days later they found the basement suite flooded with raw sewage from the toilet and bathtub where a tree root had damaged the sewer line. The tenants attempted to contact the landlord and left a message on the landlord's daughter's phone. The landlord's daughter had been acting as an agent for her mother. As they did not hear back from the landlord the tenants treated this flood as an emergency and contacted a restoration company. The tenants had to pay a deposit of \$500.00 to the restoration company and the receipt for this has been provided in documentary evidence.

The landlord's agent did call back a few days later and emails were exchanged between the landlord's agent and the tenants concerning the flood. The landlord's agent had said she had got the message but as she had left her phone elsewhere she did not get it straight away. The flood occurred on or about April 19, 2012 and the restoration company did not complete the restoration work until June 15, 2012. This left the entire

basement area of the property out of commission. The restoration company had to take the drywall out up to three and a half feet from the floor in the entire basement; the flooring and bathroom had to be renovated, the carpets were replaced, the whole basement area had to be sanitized and dried out due to the raw sewage. Eventually the landlord did take over the repairs and introduced a new restoration company to complete them in line with the landlord's insurance company.

The tenant testified that they had originally tried to deal with the landlord directly concerning the \$500.00 paid to the restoration company and to have the rent reduced for the two months they had to live without the basement area. At that time the tenants sought half a month's rent from April 19 to June 15, 2012; however, the landlord did not agree and only offered the tenants \$600.00 in compensation. The landlord later gave the tenants a Two Month Notice to End Tenancy and indicated on the Notice that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The tenants vacated the rental unit on July 09, 2013.

The tenant testified that they filed a claim for dispute resolution in September, 2013 when it became clear the landlord would not provide proper compensation to the tenants. At that hearing the tenant testified he withdrew his application as additional items needed to be added to the claim. The tenant was given leave to reapply. The file number for that application is included on the front cover of this decision.

The tenant seeks to recover the \$500.00 paid to the restoration company as a deposit. The tenant now seeks to recover two thirds of the rent for two months the tenants could not use the basement area of the unit. The tenant revised this as the basement area contained two bedrooms, the living room, the laundry room, a kitchen, and a bathroom and storage area for the unit. The upstairs portion of the unit contained, four bedrooms, another kitchen and a washroom. As the area affected impacted on the tenants daily living the tenant revised the claim from half a month's rent to two thirds. The amount claimed is \$2,400.00 a month for two months to a total amount of \$4,800.00.

The tenant seeks to recover double the security deposit to an amount of \$3,600.00. The tenant testified that the tenancy ended on July 09, 2013, the landlord failed to do a move out condition inspection report with one or all of the tenants and the landlord received the tenants forwarding address in writing. This was sent by registered mail on September 25, 2013.

The tenant seeks to recover the filing fee from the landlord of \$100.00.

Analysis

The landlord did not appear at the hearing to dispute the tenant's 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 tenant's documentary evidence and sworn testimony before me.

With regard to the tenant's claim to recover the \$500.00 paid to the restoration company for a deposit for the start of the emergency repair. I am satisfied that the tenants followed s. 33 of the *Act* and attempted to contact the landlord before they contacted the restoration company. The tenants also provided information to the landlord or the landlord's agent about the extent of the damage and the invoice for the money paid to the restoration company. The landlord later took over the repairs and involved their insurance company. I find as the flooding in the basement was not caused by the tenants the tenants are not responsible to pay for any of the charges to the restoration company. Consequently, the tenant has established their claim to recover **\$500.00** from the landlord for the amount paid by the tenants to the restoration company.

With regard to the tenant's claim for compensation for the loss of the use of the basement area of the unit from April 19 to June 15, 2012, The tenant seeks to recover two thirds of the rent paid for this period and has calculated that as two months' rent to an amount of \$4,800.00. As the flood did not occur until April 19, 2012 and was

remedied on June 15, 2012; I have calculated the rent paid for this period and reduced that by two thirds. The amount due for 19 days in April is therefore \$960.00; the amount due for May is \$2,400.00; and the amount due for 15 days in June is \$1,200.00.

Consequently I have reduced the tenant's claim to **\$4,560.00**.

With regard to the tenant's claim to recover double the security deposit; Section 38(1) of the *Act* 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 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 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 this tenancy ended on July 09, 2013 and the landlord received the tenant's forwarding address in writing on September 30, 2013, as it is deemed to have been received five days after posting when sent by registered mail. As a result, the landlord had 15 days from receiving the tenant's forwarding address to return the tenants' security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$3,600.00** pursuant to section 38(6)(b) of the *Act*.

As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount, pursuant to s. 67 and 72(1) of the *Act*.

Deposit paid to restoration company	\$500.00
Compensation for loss of use of the basement area	\$4,560.00

Double the security deposit	\$3,600.00
Filing fee	\$100.00
Total amount due to the tenant	\$8,760.00

Conclusion

I HEREBY FIND largely in favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$8,760.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable 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: March 13, 2015

Residential Tenancy Branch

