



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security and pet deposits; 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 to reduce rent for repairs services or facilities agreed upon but not provided; 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 by registered mail on October 15, 2014. Canada Post tracking numbers were provided by the tenants 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*.

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

- Are the tenants permitted to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenants testified that this tenancy was due to start on September 01, 2014. Rent was agreed at \$2,000.00 per month for the entire property including a cabin. The tenants paid a security deposit of \$1,000.00 on September 01, 2014 and a pet deposit of \$1,000.00 on September 06, 2014.

The tenants testified that they agreed to take the unit from September 01, 2014 but still had possession of their current unit until the end of September, 2014. The tenants wanted to take possession of this unit straight away and paid rent for September of \$1,200.00. The landlord agreed to a rent rebate for September of \$800.00 as the outside area required extensive work in cutting grass, yard work, garden clean up and garbage/furniture removal that the previous tenants had left. The tenants referred to the addendum to the tenancy agreement which documents this work.

The tenants testified that before they could move into the unit they found the property had no water and that there was a water leak and a break in the water pipe in the crawl space of the main house. This left the main house and the cabin without water. The tenants were given permission to sublet the cabin and they were unable to do this without water to the cabin. The tenants contacted the landlord and the landlord sent out a plumber to assess the problem and make necessary repairs. The water to the main house was not reconnected until September 20, 2014 and the water to the cabin was not connected until September 30, 2014.

The tenants testified that without water to the property they were unable to move into the house and could not sublet the cabin. The tenants asked the landlord for a further rent rebate for the loss of this essential service but the landlord stated in an email that the tenants had already had a rent rebate for yard work, garbage removal and water.

The tenants referred to the tenancy agreement which notes the rent rebate was for cutting grass, yard work, and garden clean up and garbage/furniture removal and that water was not considered part of this rent rebate.

The tenants testified that they could not fully move into the main house until September 21, 2014 and the cabin could not be sublet until it had water after September 30, 2014. Due to this the tenants seek to recover the rent paid for September of \$1,200.00.

The tenants testified that they paid \$100.00 to have the electricity put on in the property on September 05, 2015. As the tenants felt they had to give notice to end the tenancy due to the issues with the water they seek to recover this amount from the landlord.

The tenants seek to recover the amount of \$39.75 for dump fees incurred in dumping the previous tenants' garbage. The tenants have provided copies of the dump receipts in documentary evidence.

The tenants seek to recover an amount of \$8.04 for costs incurred to have additional keys cut for the main house and cabin. The tenants agreed they did receive two keys for the main house and one key for the cabin.

The tenants testified that they gave the landlord notice to end the tenancy on September 27, 2014 with an effective date of October 31, 2014. This Notice also contained the tenants' address they would be residing in at the end of the tenancy. The tenants believe this address was also included on the move out condition inspection report; however, they cannot verify this as the landlord did not provide the tenants with a copy of that report in accordance with the *Act*. The tenants testified that the landlord agreed to return the security and pet deposits to the tenants but has not done so. The tenants testified that they do not waive their right to recover double the security and pet deposits as provided for under the *Act*. The tenants therefore seek to recover \$4,000.00 from the landlord.

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.

With regard to the tenants' claim for a rent rebate; as the tenants have vacated the rental unit I will deal with this section of their claim under a Monetary Order for money owed or compensation for damage or loss. I find the tenants have established that they were without water at the rental unit for a period of time during the first month of their tenancy and that the cabin included in the rental was without water for the entire first month of the tenancy. Water is an essential service for tenants and a landlord must act in a timely manner to reinstate water to a rental property. I have reviewed the emails between the parties and find the landlord's argument in some of the emails that the water was put back on within days is unsupported. The landlord has not disputed the tenants' evidence by attending the hearing; I therefore find I am satisfied with the undisputed evidence before me that the tenants could not take possession of the main house until September 21, 2014 after water was restored on September 20, 2014.

Although the tenants did not intend to reside in the cabin they were given permission to sublet the cabin and were unable to do so until water was restored on September 30, 2014. As the tenants had already made the decision not to continue with the tenancy they choose not to rent the cabin out for the remaining month of their tenancy. While the lack of water to the cabin may not be considered an essential service for the tenants use of the property as they were not going to reside there; the fact remains that the landlord did not provide this essential service for the property that was rented and as such I find the tenants have established a claim to recover the rent paid of **\$1,200.00** and will receive a Monetary Order for this amount pursuant to s. 67 of the Act.

With regard to the tenants' claim to recover \$100.00 for electric hook up. I find the electricity was hooked up to the unit. The tenants could have continued to reside in the unit after the water was restored but decided to give notice to end the tenancy on September 27, 2014. As this was the tenants' choice to give notice after water had been

restored to the property then it is my decision that the tenants must bare the cost for the electricity hook up and are not entitled to recover this from the landlord. This section of the tenants' claim is dismissed.

With regard to the tenants' claim for garbage dump fees. The tenants were compensated \$800.00 as a rent rebate for September. As part of this rebate was to remove garbage and furniture from the property the tenants have ready been compensated for this work and are not entitled to recover a further amount for dump fees. This section of the tenants' claim is dismissed.

With regard to the tenants' claim to recover the amount of \$8.04 for cutting extra keys; a landlord is only obligated to provide keys to the main house and the cabin. The landlord provided two keys to the main house and one to the cabin. If the tenants felt they wanted additional keys for these units then the tenants must bare any costs associated with cutting extra keys. This section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim to recover the security and pet deposits; I refer the parties to s. 38(1) of the *Act* that says 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 and pet deposit to the tenants.

Based on the above and the evidence presented I find that this tenancy ended on October 31, 2014 and the landlord received the tenants' forwarding address in writing on September 27, 2014 on their notice to end tenancy. As a result, the landlord had 15 days from the end of the tenancy, until November 15, 2014, to return the tenants' security and pet deposit or file an application to keep it. I find the landlord did not return the security or pet deposit and has not filed an application to keep it. Therefore, I find

that the tenants have established a claim for the return of double the security and pet deposit to the sum of **\$4,000.00** pursuant to section 38(6)(b) of the *Act*.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to s. 38, (6)(b), 67 and 72(1) of the *Act* in the amount of **\$5,250.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: May 25, 2015

Residential Tenancy Branch

