



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to return their security deposit and a monetary order for loss of quiet enjoyment. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to the return of their security deposit and a monetary order as claimed?

Background and Evidence

With respect to the claim for the return of the security deposit, the facts are not in dispute. The tenancy began on July 1, 2014 at which time the tenants paid a \$500.00 security deposit and ended on October 31, 2014. The tenants gave the landlord the notice that they were ending the tenancy on September 25, 2014 via email, which was the sole form of communication between the parties as the landlord was living overseas at the time. The September 25 email also contained the forwarding address to which the landlord was to send any further correspondence.

The landlord testified that he did not return the security deposit because the addendum to the tenancy agreement provided that the tenants were required to give 60 days' notice to end the tenancy or forfeit their security deposit. As the tenants did not provide the notice required under the addendum, the landlord believed he was justified in retaining the deposit.

The tenants seek \$500.00 in compensation for loss of quiet enjoyment during the tenancy. The rental unit is located on the lower floor of a home in which the upper floor contains a separate, self-contained unit. The tenants testified that the occupants of the upper floor would frequently host parties, play loud music or interact with guests so

loudly throughout the night that it prevented them from sleeping. They stated that the problems were the most severe beginning on August 15 when at 5:15 a.m. they heard a woman screaming. The following morning at 3:00 a.m., the upper occupants were yelling, cursing and breaking objects. On August 30 they had a loud party and when contacted by the tenants at 12:30, they would not cooperate to reduce the noise level.

The tenants contacted the landlord via email on September 1 and in the weeks that followed, the parties engaged in an exchange of correspondence in which the landlord promised to discuss solutions with the upper occupants and reported back that the occupants believed they were quiet and courteous. The tenants forwarded the next noise complaint on September 23 and gave the landlord their notice to end tenancy 2 days later. No noise complaints appear to have been made after that point.

The landlord testified that he did what he could, contacting the upper occupants to request that they be more considerate and proposing rules about the latest time at which noise could be made. He stated that the upper occupants had the right to entertain guests and live their life and that he was not persuaded their actions were unreasonable.

The tenants also seek to recover the filing fee paid to bring their application.

Analysis

First addressing the security deposit, the landlord cannot contract out of the provisions of the *Residential Tenancy Act* per section 5 of the Act. The Act permits tenants in a periodic tenancy to give one month's notice to end their tenancy and further states that a tenancy agreement cannot provide that a security deposit is automatically forfeited. I find the offending terms in the addendum to the tenancy agreement to be void and of no force or effect. I find that the tenants have not forfeited their security deposit.

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenants paid a \$500.00 security deposit and vacated the rental unit on October 31, 2014 and that the landlord received the forwarding address in writing on September 25, 2014. I find that the landlord failed to comply with section 38(1) and is

now liable to pay the tenants double the security deposit. Although the tenants did not make a claim for double the deposit, Residential Tenancy Policy Guideline #17 provides that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will award double the deposit if the landlord has failed to file a claim against it within the prescribed timeframe as outlined above. I therefore award the tenants \$1,000.00.

In order to succeed in their claim for compensation for loss of quiet enjoyment, the tenants must prove that they brought the issue to the attention of the landlord and that he failed to act to rectify the situation. The evidence shows that the tenants emailed the landlord on September 1 and there was apparently just one more documented noise issue arising after that date. I find that one further issue is not sufficiently significant to attract compensation and I dismiss the claim.

As the tenants have been partially successful, I find they should recover their filing fee and I award them \$50.00.

I grant the tenants a monetary order under section 67 for \$1,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are awarded \$1,050.00 and granted a monetary order for that sum.

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: July 07, 2015

Residential Tenancy Branch

