



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside on March 6, 2015. The tenant testified the landlords picked up the registered mail on March 11, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would begin on May 1, 2013, end on April 30, 2014 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$700 on May 11, 2013.

On February 17, 2014 the furnace (the primary source of heat) broke down. The landlord sent a contractor to inspect it. The contractor advised the landlord the furnace

would have to be replaced. The landlords failed to replace the furnace but instead, on March 5, 2014 gave the tenants two electrical space heaters. The space heaters were insufficient. Despite repeated requests the landlord refused to replace the primary source of heat.

On July 6, 2014 the landlord served a 2 month Notice to End Tenancy under section 49 of the Act alleging that “the rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or the landlord’s spouse.” The tenants gave the landlord a 10 day notice and vacated the rental unit as of August 1, 2014. The tenant testified that it does not appear that anyone has moved into the rental unit and it has been unoccupied for more than 11 months.

The tenant testified they provided the landlord with their forwarding address in writing on July 11, 2014. They vacated the rental unit on August 1, 2014 after giving the landlord a 10 day notice.

Tenant’s claims: Analysis

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$700 on or about May 1, 2013. I determined the tenancy ended on August 1, 2014. The tenants provided the landlord with their forwarding address in writing on July 11, 2014. The parties have not agreed that the landlord can keep the security deposit. The landlord failed to file a claim within 15 days

of the later of the end of the tenancy or the date the landlord received the tenant's forwarding address. The landlord does not have a monetary order against the tenants. As a result I determined the tenants are entitled to double the security deposit or the sum of \$1400.

Section 51(2) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

On July 6, 2014 the landlord served a 2 month Notice to End Tenancy under section 49 of the Act alleging that "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenants gave the landlord a 10 day notice and vacated the rental unit as of August 1, 2014. The tenant testified that it does not appear that anyone has moved into the rental unit and it has been unoccupied for more than 11 months. The landlords failed to appear at the hearing and failed to present evidence to dispute this testimony. I determined the tenants are entitled to the equivalent of 2 months rent under section 51(2) of the Act or the sum of \$2800.

The tenants also claim the sum of \$630 for additional heating cost incurred and the reduced value of the tenancy caused because the landlords refused to fix the furnace. .

The furnace (the primary source of heat) broke down on February 17, 2014. The landlord sent a contractor to take a look at it. The contractor advised the landlord the furnace would have to be replaced. The landlords failed to replace the heat but instead, on March 5, 2014 gave the tenants two electrical space heaters. The space heaters were insufficient. Despite repeated requests the landlord refused to replace the furnace. The tenants estimated it cost them an additional \$10 per day for 63 days being the extra cost they had to pay for the hydro in contrast to the furnace. In addition it was not nearly as effective source of heat given the size of the rental unit. I determined the claim of \$630 for the loss of the primary source of heat and additional costs is reasonable and the tenants are entitled to the amount claimed.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$4830 plus the sum of \$50 in respect of the filing fee for a total of \$4880.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: July 08, 2015

Residential Tenancy Branch

