

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> MNDC, MNSD, OLC, LRE, FF

<u>Introduction</u>

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- 1. A Monetary Order for compensation Section 67;
- 2. Return of the security deposit Section 38;
- 3. An Order for the Landlord to comply Section 62;
- An Order suspending or setting conditions on the Landlord's access to the unit – Section 70; and
- 5. An Order to recover the filing fee for this application Section 72.

I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing by <u>registered mail</u> in accordance with Section 89 of the Act. The Landlord did not attend the hearing. The Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to compensation for the payment of a strata fee?

Are the Tenants entitled to return of a portion of the security deposit?

Are the Tenants entitled to a restriction on the Landlord's right of entry to the unit?

Are the Tenants entitled to additional keys for the unit?

Background and Evidence

There is a written tenancy agreement however it is not written in English. The Tenants can read and understand the language of the tenancy agreement. No copy of the tenancy agreement was provided for this hearing.

The tenancy started on September 14, 2015. Rent of \$3,500.00 is payable monthly on the 14th day of each month. At the outset of the tenancy the Landlord collected \$3,500.00 as a security deposit. The Tenants claim return of 1,750.00.

The tenancy agreement does not require the Tenants to pay any strata fee or any amount above the rental amount however the Landlord verbally told the Tenants they had to pay for an extra fee of \$360.00 per month for the strata fee. The Tenants have only paid this extra amount one time in October 2015 and have since refused to pay it. The Tenants claim return of the \$360.00.

The Landlord has not been providing written notice to the Tenants to enter the unit and has sometimes only provided a couple of hour's notice. The Tenants have not refused the Landlord entry to date. The Tenants ask that the Landlord be required to provide written notice for entry to the unit.

At the onset of the tenancy the Landlord agreed to provide the Tenants with 3 post office keys and 3 building/garage/elevator access keys or fobs. To date the Tenants have only received 1 of each despite asking the Landlord more than once for the extra keys promised. The Tenants ask for an order requiring the Landlord to provide the keys as promised.

The Tenants withdraw the claim in relation to the utilities.

Analysis

Section 19 of the Act provides that a landlord must not require or accept either a security deposit that is greater than the equivalent of 1/2 of one month's rent payable

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under the tenancy agreement. Further, if a landlord accepts a security deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the Tenant's undisputed evidence of payment of more than ½ the monthly rent as a security deposit I find that the Tenants are entitled to return of the overpaid amount of **\$1,750.00**.

Section 7 of the Act provides that where a landlord does not comply with the tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the Tenant's undisputed evidence that nothing in the tenancy agreement requires the Tenant to pay a strata fee or any amount greater than the rental amount I find that the Landlord collected a strata fee without right. As a result I find that the Tenants are entitled to recovery of the \$360.00 paid to the Landlord in October 2015. Based on the undisputed evidence that the Landlord promised to provide 3 sets of mail and building access keys to the Tenants and considering that this has yet to happen I find that the Landlord has breached the agreement and I order the Landlord to supply the remaining 2 sets of keys no later than 2 days after receipt of this Decision. Should the Landlord fail to provide the keys as ordered I give the Tenants leave to reapply for compensation from the start of the tenancy.

Section 29 of the Act provides that:

- (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
 - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;

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(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Based on the Tenant's evidence that the Landlord has not entered without the Tenant's verbal permission I find that the Tenants have not substantiated that the Landlord has breached the Act. The Tenants may refuse the Landlord entry if the Landlord does not

comply with the above section of the Act. As there has been no breach I dismiss this

claim with leave to reapply should the Landlord enter the unit without permission or

notice or as otherwise provided in the above section.

As the Tenants' application has been successful I find that the Tenants are also entitled

to recovery of the \$50.00 filing fee for a total entitlement of \$2,160.00. The Tenants

may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

I grant the Tenants an order under Section 67 of the Act for \$2,160.00. If necessary,

this order may be filed in the Small Claims 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: February 05, 2016

Residential Tenancy Branch