



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution a monetary order.

The hearing was conducted via teleconference and was attended by both tenants.

The tenants provided documentary evidence to confirm each named landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 11, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The tenants submitted Canada Post tracking information that confirmed the named corporate landlord accepted delivery of the hearing package on September 15, 2015 and the named individual landlord refused to accept the hearing package delivery on September 14, 2015. I find the named individual landlord has deliberately attempted to avoid service of these documents.

Based on the testimony and the documentary evidence of the tenants, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for breach of the tenancy agreement; loss of quiet enjoyment; for double the amount of the security and pet damage deposits and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 38, 71, and 72 of the *Act*.

Background and Evidence

The tenants described two consecutive tenancies between themselves and the named landlords for the subject rental unit. The tenants submitted that they originally moved into the rental unit as of July 1, 2013 under a 1 year fixed term tenancy.

The tenants testified that during the first fixed term tenancy the landlord allowed several showings of the rental property as it was listed for sale. As a result, the tenants requested a new tenancy agreement that would include a clause to not allow any real estate showings for the duration of the tenancy agreement.

The tenants testified they agreed to another fixed term tenancy for 1 year beginning on July 1, 2014 for a monthly rent of \$2,100.00 per month due on the 1st of each month with a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 paid on June 28, 2013.

The tenants stated that they signed the agreement and the landlord said he would add the additional term to not allow any showings for the full year of the 2nd fixed term. The tenants stated the landlord never provided them with a copy of the new agreement.

The tenants submitted a copy of an email from the landlord dated May 18, 2014 in which the landlord wrote:

“Further to our conversations yesterday we offer the following: a 12 month lease from July 1-2014 to June 30-2015 @ \$2,100.00 per month. There will be no real estate listings during that time frame. In early May 2015 we can all review this again. We’ve enjoyed you as tenants but understand your concerns. Think it over & let us know on Tuesday. Regards, Larry.” [reproduced as written]

The tenants submitted that despite this agreement the landlord asked in April 2015 if he could send over a realtor to do a valuation of the property. They stated that from that day forwarded various agents attended the property and conducted showings 2 to 3 times per week until the end of the tenancy.

The tenants stated that despite repeated attempts to have the landlord restrict these showings in compliance with their agreement the landlord simply dismissed their complaints and continued to allow showings.

The tenants seek compensation equivalent to 1 month’s rent for the landlord violating the tenancy agreement and an additional 1 month’s rent for the loss of quiet enjoyment. The tenants submit they determined these amounts based on the number of visits per week and the additional work they had to do to prepare for showings.

The tenants testified the tenancy ended on June 30, 2015 and that they had provided their forwarding address to the landlord in writing on June 28, 2015. The tenants testified that they have not yet received their deposits back yet from the landlords.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the tenants' undisputed evidence and testimony I find the parties had entered into a tenancy agreement that prohibited the landlord's ability to show the property to potential purchasers of the rental property by real estate agents.

I also find the landlords then breached that portion of the agreement and allowed a significant number of showings throughout the last 3 months of the tenancy. As such, I find the tenants are entitled to compensation if they can establish any losses or damages that have resulted from this breach.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter; and use of common areas for reasonable and lawful purposes, free from significant interference.

I accept that as a result of the above noted breach the tenants suffered a loss of quiet enjoyment of the rental unit. I also find that the tenants have provided sufficient undisputed evidence to establish the claim for \$2,100.00 over the course of the three month period is a reasonable amount of compensation based on the number of showings the tenants had indicated occurred during that period.

While I have found the landlord breached the tenancy agreement and the tenants suffered a loss of quiet enjoyment I find the simple act of breaching the agreement in and of itself does not provide justification for any further compensation.

As such, I dismiss the portion of the tenants' claim for \$2,100.00 for the landlord's act of breaching the agreement.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the tenants' undisputed testimony and evidence I accept the tenancy ended on June 30, 2015; that the tenants provided the landlord with their forwarding address on June 28, 2015; and that the landlords have failed to return both the security deposit and the pet damage deposit. There is also no evidence before me that the landlords have filed an Application for Dispute Resolution seeking to claim against either or both of the deposits.

As such, I find the landlords had until July 15, 2015 to either return both deposits or file a claim against both deposits with the Residential Tenancy Branch. As there is no evidence before me that the landlords did so, I find the landlords have failed to comply with the requirements of Section 38(1) of the *Act*. As a result, I find the tenants are entitled to double the amount of both deposits pursuant to Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$6,400.00** comprised of \$4,200.00 double the amounts of the security deposit and pet damage deposit owed; \$2,100.00 loss of quiet enjoyment and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: March 8, 2016

Residential Tenancy Branch