



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on September 20, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 14, 2016 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants state that they did not receive any application from the Landlord. The Landlord states that nothing was served and that the application was abandoned by the Landlord. As the Landlord failed to pursue its application I dismiss the application. The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions on the Tenants’ application.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Did the Landlord breach the Tenant’s rights and if so are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy of an upper unit started on May 28, 2016 and ended on July 6, 2016. Rent of \$1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Landlord lived in the lower unit. The Landlord owes the Tenants **\$28.37** and **\$40.95** for utility costs.

The Tenant states that their forwarding address was sent to the Landlord by registered mail on August 19, 2016. The Landlord states that she was out of town and never picked up mail for some time so did not receive the forwarding address until sometime in the first part of October 2016. The Landlord states that the security deposit was not returned to the Tenants. The Tenants claim return of double the security deposit.

The Tenant states that the Landlord disturbed their peaceful enjoyment of the unit by playing loud music, banging on the walls, smashing items in her unit, and screaming obscenities at them. The Tenant states that on one occasion the Landlord swung chains around the inner doorway area that was shared with the Tenants. The Tenant states that on one occasion the Landlord drove her vehicle at a fast speed to within a foot of the Tenant and then threatened to knock the male Tenant's teeth out. The male Tenant describes himself as 200 lbs and 6'2". The Tenant describes the Landlord as approximately 5'8" and 120 lbs. The Tenant states that they were so frightened and in order not to be subjected to the Landlord's disturbances and continuing noise from the lower unit that they had to leave the unit for one night and stay at a hotel. The Tenants provided a hotel and meal receipt for June 27, 2016. The Tenants played an audio recording of the sound coming from the Landlord's lower unit on that date.

The Tenant states that he and his wife were only in the unit for 9 days as the rest of the tenancy was spent on the road for their jobs as long haul drivers. The Tenant states that the Landlord never threatened his wife, the other Tenant, while she was alone in

the unit but showed a constant hostile demeanor. The Tenant provided witness letters from two parties in relation to the Landlord's behavior. The Tenant states that each day that they were in the unit the Landlord did something to scare or disturb the Tenants.

The Tenant states that while they were not in the unit the Landlord entered their unit and on one occasion, shortly after they moved into the unit dog feces was found in the unit. The Tenant states that the Landlord has a dog that visits her and that the Landlord told the Tenants that the dog was confused about not living in the upper unit as the Landlord was previously living in that upper unit. The Tenant states that they do not have a dog. The Tenant states that the Landlord entered their unit to place their laundry supplies in their unit that were in the laundry room.

The Tenant states that at the outset of the tenancy the Landlord told them laundry was provided and that the Landlord then removed their use of the laundry and locked their access. The Tenant states that the Landlord agreed that the Tenants could park on the driveway and then later told the Tenants that they could not park on the driveway. The Tenant states that because of the Landlord's frightening behavior they suffered sleep deprivation and mental harm to the extent that the Tenants felt they could no longer reside in the unit. The Tenant states that although the police were contacted about the Landlord's behavior the Tenants were told to come back to the police only if there was physical harm. The Tenant claims hotel, meals, storage, and moving costs.

The Tenant claims mailing costs for their forwarding address and evidence photocopy costs.

The Landlord states that the dog referred to by the Tenants was only in the Landlord's unit rarely. The Landlord denies slamming doors, yelling, threatening the Tenant's teeth, advancing the vehicle towards the Tenant, entering the Tenant's unit, removing any laundry supplies or denying the use of the laundry. The Landlord states that there was never any written tenancy agreement and no agreement for parking. The Landlord states that she disagrees with everything the Tenants state.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Tenant's oral evidence supported by the Witness evidence and including the audio evidence played at the hearing I find on a balance of probabilities that the Landlord did act in a manner that would significantly disturb the Tenants. Given the text evidence I do accept that the Landlord failed to provide parking on the driveway and access to laundry as verbally agreed at the outset of the tenancy. I also accept, given the Landlord's very vague and evasive evidence that the Landlord did enter the unit without the Tenant's knowledge or permission while the Tenants were absent.

However given that the Tenants could have made an application for compensation for such disturbances without ending the tenancy I cannot find that their remedy of moving out was their only remedy. I also do not consider, given the description of sizes, the Tenant's evidence of being in physical fear of the Landlord to be convincing. As such I do find that the Tenants are only entitled to compensation for the disturbance and not for the costs of moving. I find that the Tenants are entitled to a **\$797.97** for being disturbed and having their privacy rights breached by the Landlord. I calculate this amount based on a per diem rate of \$53.33 for the 9 days that the Tenants were in the unit and were disturbed for the sum of **\$479.97** with an additional global amount of **\$300.00** for an unknown number of privacy breaches. Based on the undisputed evidence I find that the Tenants are also entitled to **\$69.32** for utilities.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the supported evidence of the Tenant's provision of their forwarding address by registered mail, the undisputed evidence of the end of the tenancy and the undisputed evidence that the Landlord neither returned the security deposit or made an application to claim against the security deposit I find that the Tenants have substantiated an entitlement of double the security deposit plus zero interest in the amount of **\$1,600.00**.

As a change of address is a convenience and not a requirement for the Tenant's redirection of mail, I find that the Tenants have not substantiated that the Landlord caused this cost and I dismiss this claim. As there is no provision in the Act for a party to be liable for costs to participate in the proceedings other than the filing fee I dismiss the photocopy costs.

As the Tenants' application met with substantial success, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,567.29**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,567.29**. 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: March 31, 2017

Residential Tenancy Branch