



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application brought by the tenant(s) requesting a monetary order for \$3600.00.

The applicant(s) testified that the respondent was served with notice of the hearing by registered mail that was mailed on January 9, 2017; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing, and I conducted the hearing in the respondent's absence.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicants have established monetary claim against the respondent and if so in what amount.

Background and Evidence

The applicant testified that a security deposit of \$700.00 was paid on September 24, 2016, and the tenancy began on October 1, 2016, with the monthly rent of \$1400.00. The applicant testified that the tenancy ended on December 1, 2016 and the forwarding address in writing was given to the landlord on December 19, 2016, with the request for return of the security deposit.

The applicant testified that, to date, the landlord has failed to return any of the security deposit, and therefore they are requesting an order for return of double that the deposit, as required under the Residential Tenancy Act.

The applicant testified that, the time they spent in the rental unit was absolutely horrible and therefore they are also requesting the return of 75% of the rent that they paid.

The applicant testified that numerous things negatively affected their tenancy at the rental unit including, but not limited to the following:

- Mold on the shower curtain when they first moved in, however the curtain was subsequently replaced.
- Malfunctioning microwave door which had no handle to open it, that the landlord refused to fix, and therefore they had to pry it open with their fingernails.
- Landlord frequently requested the return of one of their keys so that he can show the rental unit.
- A showerhead that leaked on the sides and was never fixed, even though the landlord claims he sent someone to repair it.
- Random people coming into the apartment on the landlord's behalf with no notice.
- A TV that only worked with the PC connected.
- This was shared accommodation, and they were told there would be a maximum of four people living there, and the landlord rented to a total of five people.
- There were only two kitchen chairs to be shared by all five people.
- They felt insecure never knowing who the landlord would be bringing into the rental property.

They believe that because of all these issues they had a loss of enjoyment of the rental unit, and believe they should only be paying 25% of the rent as a result.

The applicants are therefore requesting a monetary order as follows:

Return of full security deposit	\$700.00
Penalty for failing to return security deposit	\$700.00
Return of 75% of October 2016 rent	\$1050.00
Return of 75% of November 2016 rent	\$1050.00
Filing fee	\$100.00
Total	\$3600.00

The applicants further testified that the landlord failed to do any move-in inspection or move-out inspection of the rental unit.

Analysis

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on December 1, 2016 and the tenant testified that the landlord was given a forwarding address in writing on December 19, 2016, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenants.

The tenants paid a security deposit of \$700.00, and therefore pursuant to sections 38 and 67 of the Residential Tenancy Act I order that the landlord must pay \$1400.00 to the tenants.

The tenants are also requesting an order for return of 75% of the rent that they paid over the two month period claiming that numerous problems with the rental unit cause them to have a loss of enjoyment of 75%.

I have reviewed the information provided by the tenants, and although there was some inconvenience caused during the tenancy is my finding that the tenants have not shown that they had a significant loss of use of the rental unit. The majority of the problems reported by the tenants were of a fairly minor nature, and although the tenants stated they felt some insecurity with people coming and going from the rental unit, this was shared accommodation, and they did not have exclusive use of this rental property.

It is my decision, therefore, that I am not willing to allow a reduction in rent.

I will however allow the request for recovery of the filing fee, as I have still allowed a significant claim against the landlord.

Conclusion

As stated above I have allowed a total claim of \$1500.00 and have issued a monetary order in that amount.

The remainder of the claim has been dismissed without leave to reapply.

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: June 30, 2017

Residential Tenancy Branch