



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of the security deposit or pet damage deposit. The details section of the application also seeks a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the hearing with her spouse. However, despite notifying the landlord of this hearing by serving the Tenant's Application for Dispute Resolution and Notice of a Dispute Resolution Hearing by registered mail on April 13, 2017, no one for the landlord joined the call. The tenant testified that the landlord was served on that date and in that manner and orally provided a tracking number. The tenant also testified that the registered mail was returned to the tenant on April 19, 2017 marked "Refused" by Canada Post. The tenant was given the opportunity to provide proof of such service after the hearing concluded. I have now received a Canada Post cash register receipt dated April 13, 2017, a copy of a Registered Domestic Customer Receipt addressed to the landlord, and a copy of the envelope addressed to the landlord and marked "Refused" by Canada Post, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

In order to allow the landlord's spouse to remain in attendance during the hearing, with his consent and with the consent of the tenant, and considering evidence provided for this hearing, the Application was amended to include the tenant's spouse as an applicant tenant, and the frontal page of this Decision reflects that amendment.

The tenants both gave affirmed testimony and called 2 witnesses who also gave affirmed testimony, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and

more specifically, compensation for the landlord's failure to use the rental unit for the purpose set out in a notice to end the tenancy?

Background and Evidence

The first tenant (KN) testified that this month-to-month tenancy began on August 1, 2016 and the tenants vacated the rental unit on February 22, 2017. Rent in the amount of \$800.00 per month was payable on the 1st day of each month and there are no rental arrears. The rental unit is a single family dwelling, and no written tenancy agreement exists.

The tenant further testified that the landlord collected a security deposit from the tenants prior to the beginning of the tenancy in the amount of \$400.00. The tenants provided the landlord with a forwarding address in writing by sending a note by registered mail to the landlord's mailing address on February 22, 2017. A copy of the note has been provided for this hearing, as well as a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the landlord. The registered mail has not been returned to the tenants. The landlord has not returned any portion of the security deposit to the tenants and has not served the tenants with an application for dispute resolution claiming against the security deposit. The tenants claim double the amount, or \$800.00.

The tenant also testified that the parties had been to Arbitration on numerous occasions and the tenants have provided a copy of a Decision of the director dated January 24, 2017 wherein the tenants' applications for an order cancelling a notice to end the tenancy for landlord's use of property, as well as numerous other applications were dismissed.

The tenant testified that the landlord had tried several times to evict the tenants, and the tenants were forced to leave after the landlord served a 2 Month Notice to End Tenancy for Landlord's Use of Property. The reason for ending the tenancy stated that the landlord or a family member would be occupying the rental unit, but no one has moved in. The rental unit remains vacant. The tenants have remained friends with the people who reside next door to the rental unit, both of whom are witnesses for today's hearing, and the tenants have called into this conference call hearing from the home of those witnesses. The landlord has caused some renovations to be done in the rental unit, but has not been there, no one mows the grass.

A copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property has not been provided as evidence for this hearing, however the January 24, 2017 Decision grants the landlord an Order of Possession, and states: "...From the record, those eviction attempts would appear to be this Notice, the prior two month Notice, the one month Notice for cause referred to above and a ten day Notice for alleged non-payment of August or September rent (a copy of the Notice was not produced by either party)."

The second tenant (CN) testified that there was no heat in the rental unit which caused the first dispute. Then the landlord kept giving the tenants notices to end the tenancy because the landlord didn't want to repair the heating issue.

The tenants' first witness (KG) testified that she resides next door to the rental unit with her husband, and they have resided there for almost 5 years. The witness and her spouse are friends of the tenants.

About a month after the tenants vacated the rental unit, a few people arrived to the rental unit to do some renovations. About a month after that the landlord attended, mowed the lawn once and has not been back. No one lives in the rental unit and no one is coming or going from it.

The tenants' second witness (WG) testified that he is the spouse of the first witness and a friend of the tenants, and resides next door to the rental unit. The landlord used the witness' name in a previous dispute without the witness' permission.

No one presently lives in the rental unit, no one is ever there, and the lawn hasn't been cut.

Analysis

The *Residential Tenancy Act* specifies that a landlord must either return a security deposit to a tenant in full or apply for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenants double the amount. In this case, the tenants have provided proof of sending the forwarding address to the landlord by registered mail on February 22, 2017. Documents served in that manner are deemed to have been served 5 days later. The tenant testified that the mail was not returned to the tenants, but the registered mail for serving the hearing package for this hearing was returned to the tenants marked "Refused." The tenant also testified that the landlord has not served the tenants with an application for dispute resolution claiming against the security deposit, and I have no such application before me. Therefore, I am satisfied that the landlord has failed to comply with the *Act*.

With respect to the amount claimed, I have also reviewed the January 24, 2017 Decision which shows that the hearing was attended by the landlord and both tenants, and evidence of a \$400.00 security deposit is included in that Decision. Therefore, I accept the testimony of the tenant that the security deposit collected by the landlord was \$400.00, and the tenants have established a monetary claim for double that amount.

With respect to the application for compensation for the landlord's failure to use the rental unit for the purpose set out in a 2 Month Notice to End Tenancy for Landlord's Use of Property, I accept the testimony of the tenants and witnesses that no one has yet moved onto the property but some renovations have been made. However, in the absence of a copy of that notice, I cannot be satisfied that it was in the approved form or that it qualified as a notice under the *Residential Tenancy Act*. If it does not qualify, the tenants are not entitled to any compensation.

The Decision of January 24, 2017 refers to such a notice, but also states that a copy of a notice was not provided for that hearing. It is not clear to me which notice the Arbitrator was referring to, however the Decision also provides the landlord with an Order of Possession, which must be granted if the Arbitrator dismisses the tenant's application, so long as the notice given is in the approved form. The onus is on the tenants to establish the claim, and in the absence of a copy of the notice, the application for monetary compensation cannot succeed. However, because the Arbitrator granted the Order of Possession to the landlord, I find it equally justifiable to dismiss the tenant's application for compensation with leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property is hereby dismissed with 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: September 15, 2017

Residential Tenancy Branch