



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the male tenant. The landlords did not attend.

The tenant provided documentary evidence confirming his testimony that the landlord was served with notice of this hearing via registered mail on May 27, 2011; with his amended application on June 23, 2011 (including the provision of the tenants' forwarding address); and by registered mail on July 9, 2011.

I accept that the landlords have been sufficiently served with notice of this hearing and the tenants' Application for Dispute and in accordance with the *Residential Tenancy Act (Act)* for the purposes of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for loss of electricity; for all or part of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant testified the tenancy began on October 1, 2010 as a month to month tenancy for a monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid in August 2010.

The tenant further testified that the tenancy ended on or before April 30, 2011 and that the landlord was provided with the tenants' forwarding address at that time and that the tenant has not received anything from the landlord in regard to the return of the security deposit. The tenants provided the landlord with their forwarding address by courier and by registered mail at the end of June 2011 and early July 2011.

The tenant testified that while the tenancy agreement included utilities the landlords had control of the thermostat and the rental unit was extremely cold throughout the tenancy.

The tenant testified the landlords had set the thermostat to engage when the upstairs temperature reached 19 degrees. He further stated that it would go on every morning until 7:30 and then again around 6 each evening as the landlords were away during the day.

The tenant testified that he discussed with the landlords but that nothing ever changed and that the tenants had to use several space heaters of their own and ones that they had borrowed. The tenant stated that the space heaters only took the chill out of the room but did not provide sufficient heat to use the unit comfortably.

The tenant also testified that on March 8, 2011 the electricity to one of the bedrooms stopped working. He testified that he reported it to the landlords immediately, who came down to look at and could not figure out and said he would return to deal with it but he never did. The tenants had to use extension cords to have electricity in the bedroom.

The tenants seek compensation for the lack of heat and the loss of electricity in one bedroom in the amount of \$1,350.00 or the equivalent of 1 month's rent.

Analysis

Section 38(1) of the *Act* requires a landlord to, within 15 days of the end of the tenancy and receipt of the tenants' forwarding address, either return the security deposit or file an application to make a claim against the security deposit.

In the absence of any evidence or testimony from the landlords and based on the evidence and testimony of the tenant I accept the landlords were provided with the tenant's forwarding address at the end of the tenancy. I find, therefore, the landlord has failed to comply with Section 38(1). Section 38(6) states that if the landlord fails to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

In making a claim for damage or loss, the party making the claim has the burden of providing sufficient evidence to establish the following four points:

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

I accept the tenant's testimony that the landlords have failed to provide adequate heating to the rental unit. As such, I find the landlord has failed to meet his obligations under section 32 that require the landlord to provide and maintain residential property in a state that, among other things, make it suitable for occupation by a tenant.

I find the failure to provide sufficient heating that allows the tenant to use the rental unit in a comfortable manner has reduced the value of the tenancy. I accept the tenants took all reasonable steps to mitigate any loss and discomfort that they could. I further accept the tenants' valuation of the loss.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,750.00** comprised of \$1,350.00 compensation; \$1,350.00 for return of double the amount of the security deposit; and the \$50.00 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 landlord 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: August 10, 2011.

Residential Tenancy Branch