



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC
 Tenants: MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary order. The tenants also sought a monetary order.

The hearing was conducted via teleconference and was attended by the two landlords and both tenants. At the start of the hearing only one tenant was in attendance, the second tenant joined into the hearing after approximately 25 minutes.

The matter was originally convened on July 28, 2011 at 1:30 p.m. At that time the landlord identified that he was unable to serve the tenants with his evidence as there was an incorrect forwarding address provided. Addresses were corrected and the hearing was adjourned to have the landlord serve the tenants with his evidence and Application.

At the start of this hearing the tenants identified that the landlord served his evidence on the tenants on August 30, 2011 in the evening. As the landlord served the tenants with his evidence and application to late for the tenants to provide an appropriate response, the landlord withdrew his application in its entirety.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for loss of quiet enjoyment; 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 28, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on January 27, 2011 for a 6 month fixed term tenancy beginning on February 1, 2011 for a monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$400.00 paid. The agreement stipulates the tenants are responsible for 1/3 of the cost of electricity and gas utilities.

The tenants testified that right from the beginning of the tenancy the landlords harassed the tenants. Within the first couple of days the parties had several disagreements

including, according to the tenants, threats from the landlord to end the tenancy. In their written submission the tenants state the landlord stated "If you guys are afraid of my son, you can leave."

A couple of days later the tenants are speaking with their aunt who tells them that she has spoken with the landlord and she wants the tenants out the next day. The tenants contend the landlord's kept the temperature too low and the tenants were cold in their rental unit.

The tenants go on to say there were further disputes regarding the use of parking; the washer and dryer; and the amount of the utilities the tenants were responsible for. The tenants also provided testimony that on the night of March 14, 2011 someone tried to break into the rental unit while they were there; that they called the police and they have a file number.

The tenants state that they paid utilities based on a bill for a period of time that they did not live in the rental unit. The tenants did not provide any documentary evidence in regard to this claim.

The tenant's seek compensation in the form of the return of two month's rent (duration of the tenancy) for loss of quiet enjoyment; utilities paid and return of the security deposit.

The landlord's provided testimony disputing all of the claims made by the tenants.

Analysis

In a claim for compensation for damages or loss the burden of proof is on the applicant to provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That 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 to mitigate the damage or loss.

While I accept that the tenants and the landlord did not get along, I find the tenants have failed to provide sufficient evidence that the tenants were harassed by the landlords to any degree that would warrant a loss of quiet enjoyment or if there were any loss that its value was for the full amount of the tenancy. I therefore dismiss this portion of the tenants' Application.

I also find the tenants have failed to provide any evidence that any utilities paid were for a period of time other than that for which the tenancy existed and I dismiss this portion of the tenants' Application.

In relation to the security deposit, I find that since the landlord has withdrawn his application to claim against the security deposit, there is no longer any valid reason for the landlord to hold the security deposit.

Further, I find that the landlord was provided the tenant's correct forwarding address on July 28, 2011 and because the landlord's application to claim against the security deposit was filed prior to this date the landlord has met his obligation to file an application to claim against the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$425.00** comprised of \$400.00 security deposit and \$25.00 of the \$50.00 fee paid by the tenants for this application, as they were only partially successful.

This order must be served on the landlord. If the landlord fails 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: August 31, 2011.

Residential Tenancy Branch