Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF
MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for damage to the unit and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of double their security deposit.

The parties appeared at the November 24, 2011, teleconference hearing, which was adjourned to the present session December 14, 2011.

The Tenants appeared at the December 14, 2011, teleconference hearing, provided affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No One appeared on behalf of the Landlord despite being served notice of this reconvened hearing by the *Residential Tenancy Branch,* and despite the Landlord making an application for dispute resolution that was scheduled to be heard at this hearing.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach and pursuant to section 67 of the *Residential Tenancy Act*?
3. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach and pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the November 24, 2011 hearing the Tenants advised they had not yet received the Landlord's application or evidence and alleged no registered mail card had been served to them. The Landlord checked the Canada Post website during the hearing and confirmed each package was waiting for pick up and notice cards were left.

After a review of each application I determined the Landlord's application was not filed within a timeframe that could allow for proper service of hearing documents and evidence. Therefore I adjourned the hearing, pursuant to Rule #6.4 of the *Residential Tenancy Branch Rules of Procedure.* Each Tenant was advised that it was their responsibility to pick up their mail from the service address they provided on their application for dispute resolution and that refusal of registered mail does not avoid or negate service of hearing documents.

The Landlord was advised that no additional evidence would be accepted from him in support of his claim. The Tenants were advised that if they wished to submit evidence in response to the Landlord's claim it must be served to the *Residential Tenancy Branch* and the Landlord as soon as possible and a minimum of five days prior to the reconvened hearing date.

The Tenants affirmed that they entered into a fixed term tenancy agreement that began on August 1, 2010 and ended on July 31, 2011. Rent was payable on the first of each month in the amount of $1,175.00 and on July 7, 2010, the Tenants paid $587.50 as the security deposit over a period of five months paid $250.00 as the pet deposit.

The male Tenant confirmed he attended the move out inspection on July 31, 2011 which had items listed on a plain piece of paper. He stated the Landlord told him that he had no choice but to sign this paper even though he only agreed to pay for having the carpets steam cleaned. He noted that the Landlord added items to this document after he signed the form as proven on the copy provided in the Landlord's evidence. This evidence also confirms he provided their forwarding address during the walk through on July 31, 2011, as it was written at the bottom of this inspection document.

Both Tenants confirmed they were seeking the return of double their deposits less the cost of the carpet cleaning that was to be deducted off the security deposit. They confirmed receiving a copy of the carpet cleaning bill for $280.00 in the Landlord's evidence.

The merits of the Landlord's application were not presented as no one was in attendance at the teleconference hearing on behalf of the Landlord.

Analysis

Landlord's application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

This matter was set for hearing by telephone conference call at 1:30 p.m. on December 14, 2011. The line remained open while the phone system was monitored for ten minutes and the only participants who called into the hearing during this time were the respondents. Therefore, as the applicant Landlord did not attend the hearing by 1:40 p.m., and the respondent Tenants appeared and were ready to proceed, I dismiss the Landlord's claim without leave to reapply.

Tenants' application

The Tenants are seeking the return of the return of double their pet and security deposit less the carpet cleaning of $280.00, in the amount of **$1,115.00** ($587.50 + $250.00 – carpet cleaning $280.00) x 2.

The evidence supports that the tenancy ended July 31, 2011, the Tenants provided their forwarding address on July 31, 2011 and the Landlord made application for dispute resolution on November 9, 2011 but did not claim against the deposits.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposit. In this case the Landlord was required to return the Tenants' security and pest deposit in full or file for dispute resolution no later than August 15, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenants have met the burden of proof and I award them double their security and pet deposits in the amount of **$1,115.00.**

Conclusion

I HEREBY DISMISS the Landlord's application.

The Tenants' application will be accompanied by a Monetary Order in the amount of **$1,115.00.** This Order is legally binding and must be served upon the Landlord.

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: December 15, 2011.

Residential Tenancy Branch