

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with cross-Applications for Dispute Resolution.

The Landlord applied for rent owing, loss of rent and to keep the security deposit and interest.

The Tenants applied to have the security deposit returned.

### Issues(s) to be Decided

Is the Landlord entitled to monetary compensation under the Act or tenancy agreement?

Are the Tenants entitled to monetary compensation under the Act or tenancy agreement?

### Background and Evidence

This tenancy began May 15, 2008, under a written tenancy agreement. The subject unit is a residential house, and the Tenants rented both the upper and lower suites, for \$1,600.00 per month, payable on the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00 on May 1, 2008.

The Tenants say that on January 1, 2009, they gave the Landlord verbal notice they were ending the tenancy. The Tenants then provided a written Notice to End Tenancy to the Landlord on January 4, 2009. The effective end date the Tenants gave was January 31, 2009. The Tenants paid the Landlord only \$1,200.00 of the \$1,600.00 rent due for January. They claim the Landlord orally agreed to a reduced rent for January.

The Landlord denies receiving a verbal notice to end from the Tenants on January 1, as the Landlord says she was out of town that day. The Landlord denies agreeing to accept less for rent for January. The Landlord says she told the Tenants she wanted to keep the rent balance owed of \$400.00, out of the security deposit and interest. She gave the Tenants a cheque for this amount, but they tore it up and threw it in the back of the Landlord's vehicle. They demanded the entire security deposit back in full. They then filed their Application seeking to have the security deposit returned.

The Landlord was able to rent the basement suite in the property out for February 1, 2009, however, she was unable to rent the upper portion out for the first day of February. The Landlord requests the balance of rent for January and loss of rent for a portion of the property for February, and requests that she keep the security deposit. The Landlord filed to keep the security deposit and interest within 15 days of the end of

the tenancy. The Landlord also claims \$147.60 for the utilities that the Tenants failed to pay for.

### Analysis

I find in favour of the Landlord and I dismiss the Application of the Tenants.

The Tenants were required to pay the entire rent for the month of January 2009. There is no written evidence to support their claim the Landlord agreed to a reduction in rent. They were short \$400.00 of the \$1,600.00 due, and I order the Tenants to pay this to the Landlord.

The Tenants also failed to give the required Notice to End Tenancy to the Landlord. The Act required the Tenants to give the Landlords a written Notice to End Tenancy no later than December 31, 2008, if they wanted the tenancy to end on January 31, 2009. Due to their short Notice, the Landlord suffered a partial loss of rent for the unit for February. I find that the Landlord mitigated her loss in accordance with the Act and made reasonable efforts to rent the whole unit for February 1. Therefore, I find the Tenants owe the Landlord \$1,000.00 for loss of rent for February 2009, and I order them to pay this to the Landlord.

The Tenants failed to establish that the Landlord should return the security deposit to the Tenants. The Landlord followed the Act and filed against it within the required time frame. The Landlord may keep the security deposit and interest in partial satisfaction of the claim. The Landlord did not provide a bill or other documentation in support of her claim for utilities owed, therefore, I dismiss this portion of the Landlord's claim.

### Conclusion

I find that the Landlord has established a total monetary claim of **\$1,450.00** comprised of \$1,400.00 in rents due and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the deposit and interest of **\$808.03** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$641.97**. This order may be filed in the Provincial Court (Small Claims) and 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: May 07, 2009.

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Dispute Resolution Officer