

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants were seeking an order to have double their security deposit returned to them, pursuant to section 38 of the Act.

The Landlord was seeking an order to keep the security deposit and for monetary compensation for unpaid utilities.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenants' claim was originally scheduled for July 27, 2009, and during the course of that hearing I made an interim order that the two Applications be joined and heard together on this date.

The other issue dealt with in the hearing was the admissibility of the Landlord's evidence. The Landlord filed the claim on June 12, 2009, however, the Landlord's evidence was not submitted until September 21, 2009, the day before this hearing.

The Tenants testified they did not receive the Landlord's evidence until 5:30 p.m. last evening.

Under the Act and the rules of procedure, evidence must be submitted five days before the hearing. The Landlord failed to submit the evidence as required and therefore, to accept this evidence would prejudice the Tenants' ability to respond to it. Therefore, I did not admit or consider the Landlord's evidence.

Issues(s) to be Decided

Are the Tenants entitled to the return of double the security deposit?

Is the Landlord entitled to payment for outstanding utilities?

Background and Evidence

This tenancy began on April 1, 2008 and ended on May 31, 2009. No condition inspection reports were done, either at the beginning or end of the tenancy.

In the tenancy agreement, the Tenants agreed to pay one third of water, electrical and heating bills. These utilities were in the Landlord's name.

The evidence of the Tenants was that the Landlord was inconsistent in presenting them bills regarding these payments. In fact, over the course of the tenancy the Tenants claim to have only received bills showing the amounts due for utilities on two occasions.

At the end of the tenancy the Landlord refused to return the security deposit as she claimed the Tenants owed her for utilities, although could not tell them the amount due at that time.

The Agent for the Landlord explained there were organizational difficulties and other circumstances which caused the Landlord to be less than efficient in providing the bills to the Tenants for payment. This is also what led to the evidence of the Landlord being submitted late.

Analysis

Based on the foregoing, the affirmed testimony and the evidence, and on a balance of probabilities, I find as follows:

I dismiss the Landlord's Application for Dispute Resolution, without leave to reapply. The Landlord claimed the Tenants owed her money for utilities, however, as the Landlord's evidence was not admitted, there was insufficient evidence to support the claim.

I allow the Application for Dispute Resolution of the Tenants. However, since the Landlord filed the claim within the 15 days required under the Act, I do not award double the security deposit. I find that the Tenants have established a total monetary claim of **\$657.13** comprised of \$600.00 for the security deposit, \$7.13 in interest and the \$50.00 fee paid by the Tenants for this application.

I grant the Tenants an order under section 67 for the balance due of **\$657.13**. 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: September 22, 2009.

Dispute Resolution Officer