

## DECISION

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders for unpaid rent, to keep all or part of the security deposit, for money owed under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord sent the Notice of Hearing and Application for Dispute Resolution by registered mail to the address the Tenants' gave him as their forwarding address, which is the same address the Tenants used in a previous hearing as their address for service. Under the Act, mailed items are deemed received five days after being sent. Therefore, I find the Tenants have been duly served under the Act. Despite this, they did not attend the hearing.

As noted above, the parties have been involved in one previous dispute resolution hearing. There were certain determinations made in that hearing that I am not able to alter, as they are *res judicata*. This means certain issues in this dispute have already been decided on and the determination prevents subsequent claims on the same matters.

For example, in the previous decision the Tenants were awarded double their security deposit back, and therefore, I have no authority to change that. As there is no evidence that the Landlord applied for a review of that decision, it must stand. I will note the matters that have been determined below.

### Issues(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

### Background and Evidence

This tenancy began in September of 2008. There was a fire in the rental unit on January 4<sup>th</sup> or 5<sup>th</sup>, 2009.

An Agent for the Landlord, referred to as "JY", agreed the Tenants could leave their property in the rental unit while the Tenants looked for a suitable place to live, and the Tenants were to give the Landlord a Notice to End Tenancy effective January 31, 2009, but failed to do so. They gave the Landlord an oral notice they were not returning to the rental unit. They moved out, however, they did not return the keys to the Landlord or participate in an outgoing condition inspection report.

The Landlord claims he could not rent the unit until the Tenants moved out, and because they did not participate in the outgoing condition inspection report or return the keys he could not re-rent the unit until the end of the term lease.

The Landlord is claiming the Tenants owe him rent for February 1<sup>st</sup> to March 11, 2009, totalling \$1,230.00. The Landlord claims the Tenants breached a term tenancy agreement and therefore owe him rent from March 11 to June 30, 2009, in the amount of \$3,270.00.

The Landlord claims for his living expenses when he returned to the city to dispute the Tenants' claims, in the amount of \$420.00, as he could not stay in the rental unit.

The Landlord also claims the Tenants owe him \$289.58 for an electrical bill and \$276.45 for a natural gas bill to the end of February 2009.

I note that in the prior hearing **it was determined that the tenancy ended on January 5, 2009**, and the Landlord was ordered to pay the Tenants double their security deposit.

### Analysis

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

The Landlord's claim against the security deposit is dismissed as it was already determined he must return that to the Tenants.

It was also determined that the tenancy ended on January 5, 2009, and therefore, the tenancy agreement was terminated by operation of the Dispute Resolution Officer orders. The Tenants' failure to return the keys or participate in the condition inspection report are not conclusive evidence of the end of tenancy date in any event.

Therefore, the Landlord is not entitled to claim that the tenancy went on for several months after the Tenants vacated, or that rent is due. Furthermore, I find the Landlord did not take any reasonable steps to minimize his losses as required under the Act. This portion of his claim is therefore dismissed.

I do find the Tenants did not give a Notice to End the Tenancy to the Landlord as required under the Act. I find that he lost one month of rent due to this and award him **\$900.00** for one month of rent.

I do not award the Landlord for all of the hydro or natural gas bills either, since he was claiming for these well into March of 2009. I do allow the Landlord **\$229.19** for hydro and **\$34.57** for natural gas bills contributable to the Tenants.

I find that the Landlord has established a total monetary claim of **\$1,203.76** comprised of the above described amounts and **\$40.00**, which is a portion of the fee paid by the

Landlord for this application. I have reduced the amount of the fee due to the limited success of the Landlord in his Application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The parties are free to offset the awards from the different hearings and calculate the applicable amount due.

### Conclusion

Much of the Landlord's claim was dismissed, as there had been a previous determination on matters in dispute between the parties and I have no authority to alter those decisions.

Nevertheless, the Landlord was partially successful in some of his claims and has been granted a monetary award.

The parties are free to offset the awards from the different hearings and calculate the applicable amount due.

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: October 06, 2009.

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Dispute Resolution Officer