

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing involved cross Applications for Dispute Resolution, made by each of the parties.

The Tenants have applied for the return of double their security deposit and pet damage deposits of \$900.00 and \$450.00, and the return of their filing fee of \$50.00, for a total claim of **\$2,750.00**.

The Landlord has applied for \$256.77 for unpaid hydro bills, \$1,800.00 for unpaid rent, \$375.00 for cleaning the rental unit, \$125.00 for truck rental, a \$750.00 shortfall in lease payments, to keep all or a portion of the pet and damage deposits, and for the recovery of the filing fee of \$50.00, for a total claim of **\$3,356.77**.

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.

At the outset of the hearing, the Landlord questioned whether or not the Tenants had “standing”, in other words, he disputed their assertion that they were Tenants in the rental unit. He based this on the fact they had not signed the tenancy agreement, but rather a third party, not named in these proceedings, signed the tenancy agreement.

The Tenants explained that they initially viewed and accepted the rental unit, paid the security and pet deposits, and the monthly rent cheques came from them, not the third party. They say the third party signed the tenancy agreement, but in fact she was the room mate of these two Tenants. They had many interactions with the Landlord over the course of the tenancy and the Landlord never disputed or questioned that they were Tenants.

As the Landlord accepted the rent and deposits from these Tenants, and knew from the outset of the tenancy that they were occupying the rental unit with the third party, and has made a claim against them for rent and other charges, I found at the outset that the Tenants and the Landlord had a tenancy relationship under an oral agreement. I further find that, at all relevant times during the course of the tenancy, the parties adopted the terms of the written tenancy agreement entered into with the third party in their oral agreement.

Issues(s) to be Decided

Are the Tenants entitled to the monetary relief claimed?

Is the Landlord entitled to the monetary relief claimed?

Background and Evidence

The tenancy started on May 15, 2008. The agreed rent was \$1,800.00 per month. At the outset, the Tenants paid the Landlord a security deposit of \$900.00, and later, in July of 2008, a pet damage deposit of \$450.00.

In or about January of 2009, the third party, who had a written tenancy agreement with the Landlord, vacated the rental unit. Initially the Tenants believed they and the Landlord could reach an agreement to reduce the rent, however, no such agreement was reached. The Tenants assert they then had an oral agreement with the Landlord that they could end the tenancy early, if they found new renters to take over for the balance of the term of the written lease with the third party.

The Tenants eventually found new renters, however, they admitted in their submissions and testimony they failed to pay rents of \$600.00 for February and \$1,200.00 for March of 2009, to the Landlord.

The Tenants vacated the rental unit on February 15, 2009. They provided the Landlord with their forwarding address, however, the Landlord failed to return the deposits or file a claim against the deposits within the required 15 days.

The Landlord failed to do incoming or outgoing condition inspection reports. In his written submissions and testimony it is clear the Landlord erroneously thought this was the responsibility of the Tenants.

Analysis

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

I find that both parties here have breached the Act.

The Tenants failed to pay rent and utilities when due, and consequently the Landlord is entitled to monetary relief as calculated below.

The Landlord breached the Act by failing to do condition inspection reports, and failing to deal with the security and pet deposits (and interest) in accordance with the Act. I find the Tenants are entitled to monetary relief as set out below.

I find the Tenants have established a total monetary claim of **\$2,712.43**, comprised of double the security and pet deposits pursuant to section 38 of the Act, and interest on the original amounts held of \$12.43.

I find the Landlord has established a total monetary claim of **\$2,056.77**, comprised of rents owed of \$1,800.00 and utilities of \$256.77. I dismiss the claims of the Landlord for cleaning, truck rental and alleged shortfall of the lease, as there was insufficient evidence to support these claims.

Pursuant to section 72 of the Act, I order that the amounts awarded be set off (2,712.43 – 2,056.77) and I grant and issue an order for the Landlord to pay the Tenants the balance due of **\$655.66**

I also order that the recovery of the filing fees to be set off as well.

Lastly, I enclose a copy of a handbook explaining the Act for each of the parties and suggest they review the rights and obligations they are required to adhere to.

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: November 05, 2009.

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Dispute Resolution Officer