



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlords – MNR, MNSD

For the tenants – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The landlords seek a Monetary Order for unpaid utilities and an Order to keep the security deposit. The tenants seek the return of the security deposit and to recover the filing fee for this application.

Both parties served the other by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Do the tenants owe the landlord for their utility bill and if so, how much?
- Are the landlords entitled to keep all or part of the security deposit and interest?
- Are the tenants entitled to receive double the security deposit back?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on December 09, 2008 and ended after the tenants gave the landlords notice to end the tenancy. The tenants paid rent of \$850.00 per month and they were also responsible to pay the utility bills for their rental unit. This was a month to month tenancy and



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the tenants paid a security deposit of \$500.00 on December 09, 2008. The landlords did not conduct a move in condition inspection.

The tenants testify that they gave the landlords one months notice to end the tenancy for August 31, 2009. They also requested that they should be allowed to end the tenancy early on August 15, 2009. The landlords agreed to this and the tenants moved out. The tenants testify that they gave the landlords their forwarding address in writing on three separate occasions, August 01, August 15 and August 19, 2009.

The tenants testify that on the day they moved out the landlords asked to do a walk through of the rental unit with the tenants at 10.00pm. The tenants felt this time was too late and did not attend the walk through with the landlords. However, the tenants claim they returned to the rental unit to do a walk through after notifying the landlords but when they arrived the landlords were not at home. On August 17, 2009 the landlords sent the tenants a letter detailing repairs and cleaning they claim the tenants did not do to the rental unit.

The landlords testify that the tenants caused some damage to the rental unit, including ill-fitted carpets; stains on carpets; scratches on the front door; badly stored carpet remnants; agreed renovation to a storage room not completed; missing curtains and curtain rods; un-hung mirror; cleaning not complete in each room; litter outside and damage to lawn; staining on stucco and cement area; fireplace left unclean. The landlords also claim the tenants did not pay their last utility bill of \$233.14.

The tenants dispute the majority of these damages and maintain that the landlords did not comply with the *Act* in regard to the move in condition inspection. The tenants also state that they were aware that there was an outstanding utility bill and when they went to pay it, it had already been paid by the landlord. The tenants agree the landlord can keep the amount of \$233.14 for this utility bill from their security deposit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlords did not comply with section 23 of the Act with regards to carrying out a move in condition inspection with the tenants at the start of the tenancy. The Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord must complete a condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion,

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Due to the above I find the landlords have extinguished their rights to retain the tenant's security deposit for damages. However, the landlords are entitled to recover the costs for the unpaid utility bill of \$233.14 from the tenant's security deposit.

I find the tenants are entitled to recover the remainder of their security deposit from the landlords. The tenants are entitled to recover double the amount of the balance of the security deposit after the deduction for the outstanding utility bill pursuant to section 38(6)(b) of the Act.



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As the tenants have been partially successful with their claim they are entitled to recover the \$50.00 filing fee for their application. A Monetary Order has been issued to the tenants for the following amount:

Security deposit	\$500.00
Balance of security deposit	\$266.86
Double the balance of the security deposit	\$533.72
Accrued interest on original amount of \$500.00	0.47
Filing fee	\$50.00
Total amount due to the tenants	\$630.72

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$630.72**. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's claim. The landlords are entitled to recover the outstanding utility bill from the tenants and this amount has been deducted from the tenant's security deposit. The remainder of the landlord's application to keep the tenants security deposit is dismissed without leave to reapply.

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 03, 2009.

Dispute Resolution Officer