

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order for rent and outstanding utilities. The tenants have applied for a monetary order for the return of their security deposit and outstanding utilities.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; carpet cleaning and outstanding utilities, for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act* (Act).

Additional issues to be decided are whether the tenant's are entitled to a monetary order for the return of their security deposit and refund of part of the hydro bill for the previous year, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on July 22, 2007 for a month to month tenancy that began on July 22, 2007 for monthly rent of \$2,000.00 due on the 1st of the month and a security deposit of \$1,017.00 was paid on July 22, 2007;
- A copy of a handwritten notice from the tenants dated August 12, 2009 stating they would be vacating the house on August 31, 2009;
- A copy of a Condition Inspection Report signed by the tenants on August 4, 2007 during the move in and again on September 8, 2009 at move out;
- A receipt for carpet cleaning in the amount of \$315.00;
- A copy of a letter from the landlord to the tenants requesting payment of outstanding utilities in the following amounts – Hydro - \$251.67, Water and Sewer - \$2,174.44, and outstanding rent of \$10.00.

During the hearing the landlord testified that the tenants were responsible for the utilities for both rental units on the residential property. However, the tenancy agreement noted

above indicates that the tenants are “responsible for all their own utilities”, there is no indication in the agreement that the tenants are responsible for the utilities of the other rental unit.

The landlord described the size of the two separate rental units. The rental unit that the tenants were in was approximately 1,250 square feet and there were 5 people living there. The 2nd rental unit was 880 square feet with 2 people living there.

The tenants provided no evidence regarding their application or contradicting the landlord’s testimony or evidence.

Analysis

Section 45 of the *Act* allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice. The tenant provided a notice dated August 12, 2009 to end the tenancy on August 31, 2009.

Section 53 states that if the effective date stated in the notice to end the tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. I therefore find that the effective date for the notice given by the tenants on August 12, 2009 is amended to September 30, 2009.

As the landlord submitted a signed move out Condition Inspection Report indicating that the any carpet cleaning costs would be charged back to the tenant and has the landlord has also provided prove of costs incurred, I find these costs are the tenant’s responsibility.

Despite the landlord’s claim that the tenants are responsible for the full cost of utilities for the entire residential property, I find the tenancy agreement does confirm this. The agreement states specifically that the tenants are responsible “for their own” utilities, I find this excludes the utilities for the other rental unit.

As such, and in light of the breakdown of the number of occupants in each unit I find that the tenant is responsible for 71% of the outstanding utilities as requested by the landlord. The landlord had requested \$2,426.11 for outstanding utilities plus \$10.00 in unpaid rent.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,097.54** comprised of \$2,010.00 rent owed; \$1,722.54 outstanding utilities, \$315.00 for carpet cleaning and the \$50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,039.17 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,058.37**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the tenants failed to appear at the hearing, I dismiss their application in its entirety, 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: January 13, 2010.

Dispute Resolution Officer