

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for unpaid rent, a monetary order for unpaid rent, a monetary order for damages under the *Act*, Regulation or tenancy agreement, and for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim. The landlords are also claiming recovery of the filing fee from the tenants for the cost of this application.

The landlords testified that the tenants vacated the unit on February 27, 2010, and therefore, an Order of Possession is not sought, and that application is hereby dismissed without leave to reapply.

Despite being served with the notice of hearing and application for dispute resolution by registered mail on February 18, 2010, the tenants did not attend the hearing.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Are the landlords entitled to a monetary order for damages under the *Act*, Regulation or tenancy agreement?

Background and Evidence

This tenancy began on September 30, 2009 as a fixed term tenancy to expire on March 31, 2010. Rent in the amount of \$2,200.00 is due on the 1st day of each month. The tenancy agreement, a copy of which was provided in advance of the hearing, states that the tenants are to pay 2/3 of electricity and heat. On September 1, 2009, the tenants paid a security deposit in the amount of \$1,100.00.

On February 3, 2010, the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting the notice to the door of the tenants' unit. That notice was provided as evidence in advance of the hearing, and states that the tenant failed to pay rent in the amount of \$2,200.00 that was due on the 1st day of February, 2010, with an expected date of vacancy being February 13, 2010.

The landlords testified that the tenants vacated the residence on February 27, 2010 and left the house key in the mailbox, leaving \$1,100.00 outstanding for rent, \$309.71 for utilities and the cost of cleaning the unit was \$262.00. The landlords provided the following evidence:

- Terasen Gas \$177.28 for January 13 to February 11, 2010;
- BC Hydro \$207.02 for January 14 to March 12, 2010;
- Terasen Gas \$198.45 for February 11 to March 12, 2010;
- Invoice from DIJ Maintenance & Cleaning Service - \$150.00 for carpet cleaning and 4 hours of general cleaning at \$25.00 per hour, and GST, totalling \$262.50;
- Copy of a letter dated January 27, 2010 from the tenants to the landlords indicating that they would be vacating as of March 1, 2010;
- Copy of an email from the landlords to the tenants dated March 19, 2010 stating that the total utilities owing at 2/3 of the bills totals \$309.71;
- Copy of an undated note from the tenants stating that the rent for February and the utilities are attached, and the landlords could keep the deposit for 11 days of rent.

The landlords testified that the tenants did not pay the utilities from January 13 to February 28, 2010, and at the time of filing the application, the landlords did not yet have the bills.

Analysis

I accept the calculations provided by the landlords which show that the tenants are responsible for \$309.71 in unpaid utilities. I also accept the landlords' evidence that the tenants still owe \$1,100.00 in unpaid rent.

With respect to the cleaning costs, no evidence was presented to show that the unit was in any different condition when the tenants moved out than it was when they moved in. No move-in or move-out inspection was provided. The *Residential Tenancy Act* states:

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) On or after the day the tenant ceases to occupy the rental unit, or
- (b) On another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

The *Act* does not give me any discretion with respect to the inspections. For that reason, the tenants cannot be held liable for cleaning expenses.

Conclusion

For the reasons set out above, I hereby dismiss the landlords' application for the cleaning costs without leave to reapply.

As for the monetary order for outstanding rent and utilities, I find that the landlords have established a claim for \$1,100.00 in unpaid rent and \$309.71 in outstanding utilities.

The landlords are also entitled to recovery of the \$50.00 filing fee. I order that the landlords retain the deposit and interest of \$1,100.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$359.71. This order may be filed in the Small Claims Court 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: April 07, 2010.

Dispute Resolution Officer