

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to each tenant by registered mail on February 03, 2010.

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

- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on July 01, 2008. Rent for this unit was \$1,050.00 per month and was due on the first of each month. The tenants paid a security deposit of \$525.00 on July 01, 2008.

The landlords testify that the tenants gave them verbal notice to end tenancy on January 04, 2010. One of the landlords states that she informed the tenants that it was too late to give Notice to end the tenancy for January, 2010 and rent would be owed for

February, 2010 and they could end the tenancy then. This landlord also states that she informed the tenant that he must give notice in writing. The landlord states that she checked the mail drop box each day and on February 08, 2010 she found the tenants written notice to end tenancy which states that the tenants are giving 30 days notice.

The landlord states that the tenants appeared to be moving out on the weekend of January 23/24, 2010. The landlord states that on January 29, 2010 the tenant called and asked about doing the move out condition inspection and asked for the security deposit. The landlord states she again explained the rules about giving notice and asked the tenant what they wanted to do about rent for February, 2010.

The landlord seeks to retain the tenant's security deposit and accrued interest in partial payment of the rent for February, 2010 and request a monetary award for the remainder.

The tenant attending testifies that they did not know they had to give one clear months notice and thought they could give 30 days' notice to the landlord.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. I refer to section 45 of the act regarding a tenants notice to end tenancy which states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenants did not give notice to end the tenancy until January 08, 2010.

Therefore the earliest the tenants could have legally ended the tenancy would have been February 28, 2010. Consequently, I find the landlords are entitled to recover rent for February, 2010 to the amount of **\$1,050.00** pursuant to section 45 of the *Act*.

I order the landlords to keep the tenants security deposit of \$525.00 and accrued interest of \$3.96 in partial satisfaction of the rent owed pursuant to section 38(4)(b) of the *Act*.

As the landlords have been successful with their claim I also find they are entitled to recover the **\$50.00** filing fee paid for their application pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued for the following amount pursuant to section 67 of the *Act*:

Unpaid rent for February, 2010	\$1,050.00
Subtotal	\$1,100.00
Less security deposit and accrued interest	(-\$528.96)
Total amount due to the landlords	\$571.04

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$571.04**. The order must be served on the respondents and is enforceable through the Provincial Court 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: May 05, 2010.

Dispute Resolution Officer