

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential tenancy Act (Act)*, regulation or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlord withdrew his application for an Order of Possession as the tenant has moved out of the rental property.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, and handed to the tenants in person on April 18, 2010. The landlords have provided a signed document from the tenants for receipt of the hearing documents

The landlords appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent and utilities?
- Are the landlords entitled to keep all or part of the security deposit and interest?
- Are the landlords entitled to a Monetary Order for Money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on November 01, 2009 and ended on April 30, 2010. This was a month to month tenancy. Rent was \$1,300.00 per month due on the 1st of each month. The tenants paid a security deposit of \$650.00 on October 22, 2009.

The tenants did not pay rent for March, 2010 on the day it was due. The landlords issued a 10 Day Notice to End the Tenancy for unpaid rent on March 26, 2010. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 05, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days and moved from the rental unit on April 30, 2010. The tenants did not pay rent for April, 2010. The total amount of outstanding rent is \$2,600.00. The landlords have provided a copy of the rent ledger for these months.

The landlords testify that they advertised the unit for rent on May 01, 2010 as soon as the tenants moved out and the unit has not yet been re-rented. The landlords seek to recover a loss of rental income for May, 2010 of \$1,300.00.

The landlords testify that the tenancy agreement with the tenants states that the tenants must pay a two thirds share of the utilities. The landlords testify that the tenants did not pay their share of the BC Hydro utilities for October to November, 2009 of \$85.20, December, 2009 to January 2010 of \$224.36 and for February to March, 2010 of \$196.99. The landlords have not yet received a copy of the utility bill for April, 2010. The landlords claim the tenants did not pay their share of the gas bill for November, 2009 of \$253.18, December, 2009 of \$241.72, January, 2010 of \$200.94, February, 2010 \$151.16, March, 2010 \$153.98, April, 2010 124.12. The total amount of outstanding utility bills is \$1,631.65. The landlords have provided copies of these utility bills in evidence.

The landlords have applied to retain the tenants' security deposit of \$650.00 in partial payment towards the rent arrears and to recover the filing fee of \$100.00.

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing. Therefore, in the absence of any evidence from the tenants, I find that the landlords have

established their claim for unpaid rent and are entitled to recover the outstanding rent for March and April, 2010 of **\$2,600.00** pursuant to s. 67 of the *Act*.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Under section 45 of the *Act*, a tenant of a month-to-month tenancy must give one clear months notice. The effective date of the 10 Day Notice was April 05, 2010 and as a result, the earliest the tenants could have ended the tenancy would have been May 31, 2010. As the tenants overstayed at the unit after the date of the Notice to End Tenancy came into force the landlords could not re-rent the unit for the month of May, 2010 and suffered a loss of rental income for this month. Consequently I find the landlords are entitled to recover the sum of **\$1,300.00** from the tenants pursuant to section 67 of the *Act*.

I also find the tenants have not paid their share of the utility bills as agreed when they entered into the tenancy. Therefore, I find the landlords have established their claim for unpaid utilities and are entitled to recover the amount of **\$1,631.65** from the tenants pursuant to section 67 of the *Act*.

I Order the landlords to retain **\$650.00** of the tenant's security deposit in partial satisfaction of the rent arrears.

As the landlords have been successful in this matter, they is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Outstanding rent, for March and April, 2010	\$2600.00
Outstanding utility bills	\$1,631.65
Filing fee	\$100.00
Subtotal	\$5,631.65

Less security deposit and accrued interest	(-\$650.00)
Total amount due to the landlord	\$4,981.65

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 **\$4,981.65**. 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: June 07, 2010.

Dispute Resolution Officer