

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for return of \$450.00 in rent paid for the month of March 2010. The tenants are also requesting that the landlord bear the \$50.00 cost of the filing fee that was paid for their application for dispute resolution.

The landlord's application is a request to retain the full security deposit of \$425.00, and a request for the March 2010 rent of \$850.00. The landlords are also requesting that the tenants bear the \$50.00 cost of the filing fee that was paid for their application for dispute resolution.

### Background and Evidence

The landlords testified that:

- The tenants signed a tenancy agreement with the rent set at \$850.00 per month and with the tenancy beginning on March 1, 2010.
- The tenancy agreement also had a liquidated damages clause in which the tenants agreed to pay \$500.00 if they breached the tenancy agreement.
- The landlords had set liquidated damages at \$500.00 as they believe it is a reasonable pre-estimate of their costs for re-renting the unit, costs such as advertising, time spent showing the unit, time spent doing and cost of credit checks and reference checks etc..
- After signing the agreement the tenants decided not to move into the rental unit and the landlords were unable to re-rent the unit for the month of March 2010, and in fact it was not re-rented until May 1, 2010.
- As a result of not moving into the unit the landlords have extra costs for re-renting the unit.

The landlords are therefore requesting that they be allowed to keep the full security deposit of \$425.00 to cover the liquidated damages, and they also request that they be allowed to retain the full \$850.00 that was paid for rent for the month of March 2010 as they were unable to re-rent it for that month.

The tenants testified that:

- They did sign an agreement to rent this rental unit beginning March 1, 2010, however when they went to view the rental unit they discovered that the doors in the unit were very small and therefore they believed it would be very difficult if not impossible for them to get their furniture into the rental unit without damaging the walls.
- Even if they did get their furniture into the rental unit there would not be sufficient room to open and close doors.
- They also discovered that the rental unit was all run by gas and not electricity and they felt gas would be too expensive.
- They therefore informed the landlords that they would not take the place.

The tenants are therefore willing to allow the landlord to keep the full security deposit, however they are requesting the return of \$450.00 of their rent.

## Analysis

The tenants signed a tenancy agreement agreeing to move into the rental unit on March 1, 2010 and they are therefore bound by that agreement. Therefore if the tenants fail to move into the rental unit they are still liable for any rental loss suffered by the landlords, and in this case the landlords were not able to re-rent the unit for the month of March 2010. Therefore I will not order that any rent be returned to the tenants, and I allow the landlords claim to retain the full \$850.00 that was paid for rent for the month of March 2010.

The tenancy agreement signed by the tenants also had a liquidated damages clause that stated that the tenants would pay \$500.00 if they breached the tenancy agreement, and in this case they did breach the tenancy agreement by failing to move into the rental unit. Therefore since it's my finding that the liquidated damages clause is a reasonable pre-estimate of the extra costs that would result from the breach it is my decision that I will allow the landlords request to keep the security deposit of \$425.00 for liquidated damages.

## Conclusion

### Tenant's application

The tenant's application is dismissed in full without leave to reapply.

### Landlord's application

I allow the landlord's full claim of \$1275.00, and therefore the landlords may retain the full security deposit of \$425.00 plus rent held of \$850.00 to cover this amount. I further issue an order for the tenants to pay \$50.00 to the landlords to cover the filing fee paid by the landlords.

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.

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Dispute Resolution Officer