

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulation or tenancy agreement and a Monetary Order to recover double the security deposit. The tenants also seek to recover the filing fee for their application.

The tenant served the landlord by registered mail on February 23, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the Act with notice of this hearing.

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

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss to recover overpaid rent and utilities?
- Is the tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on July 25, 2009. This was a fixed term tenancy which was due to expire on July 31, 2010. Both parties agreed in the tenancy agreement that either party could end the tenancy before the end of the fixed term by giving two months notice. Rent for this unit was \$2,900.00 which was due on the 1st of each month. The tenant paid a security deposit of \$1,450.00 at the start of the tenancy.

The tenant attending testifies that they paid a prorated rent for July, 2009 and then paid rent for August, September and October, 2009 of \$2,900.00. The tenant states they gave the landlord notice to end the tenancy around the middle of September, 2009 as they had purchased a

property they wished to move into. The tenant claims his family moved from the rental unit on October 12, 2009 and new tenants moved into the rental unit on October 18, 2009. The tenant seeks to recover the sum of \$1,333.88 from the landlord for rent paid from October 18 to the 31, 2009 after the new tenants took possession of the rental unit.

The tenant testifies that he gave the landlord his forwarding address in writing on January 15, 2010 with a request that the landlord returns his security deposit. The tenant claims the landlord did not return the deposit and the tenants therefore seek double the deposit back. The tenant claims the landlord did not do a move in or move out condition inspection with them. He acknowledges that they did walk through the property at the start and end of the tenancy but no report was completed by the landlord. The tenant states the landlord sent him a list of damages he claims the tenants did to the property. This includes some nicks, dents and scrapes to a wall on the staircase and one other wall; a stain on a bedroom carpet; a burn on a store room carpet and call out costs for putting the pilot light back on the furnace. The tenant acknowledges that when they moved out the walls did get a couple of dents, scrapes and nicks but this damage was minimal. He also acknowledges that there was a stain they could not remove from the bedroom carpet. He denies seeing the burn to the storeroom carpet and states that he did not put out the light on the furnace and therefore this is the landlords' responsibility.

The tenant testifies that he did not agree that the landlord could retain any amount from the security deposit as he found the amounts the landlord claimed to be excessive. He thought the landlord may keep a small portion of the security deposit but instead found he claimed nearly all of it with the exception of \$120.00.

The tenant testifies that the tenancy agreement states that they are responsible for 75% of the utility bills. The tenant has provided copies of the bills for Hydro and gas of which he has paid. The tenant seeks to recover \$64.49 for Hydro and \$43.92 for gas which is the 25% portion of these bills.

The landlord testifies that the tenants did not give him two clear months notice to end the tenancy as stated in the tenancy agreement. The landlord states he advertised the unit for rent for November 01, 2009 as the tenants had paid rent to the end of October, 2009. As the tenants had purchased a property and were moving out before the end of October the landlord states he asked them if the new tenants could start to bring boxes of their belongings into the rental unit.

He states the tenants were fine with this arrangement as they had moved out. The landlord testifies the new tenants did not move into the rental unit until November 01, 2009 when their tenancy agreement started.

The landlord claims he withheld the tenants security deposit due to damages left in the rental unit by the tenants. The landlord states he was in e-mail contact with the tenants who acknowledged that they had caused the damage. The landlord states he did a walkthrough of the rental unit with the tenant at the start and end of the tenancy but did not fill in an inspection report.

The landlord does not dispute the tenants claim for the return of 25% of the Hydro and gas billing costs of \$108.41.

The tenants have provided documentary evidence of the tenancy agreement and the utility bills. The landlord was given the opportunity to provided copies of the new tenancy agreement with the new tenants, e-mail correspondence with the tenants, photographs and his invoices for repairs to the rental unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim to be reimbursed the rent they paid from October 18 to 31, 2009, The burden of proof falls on the tenant to provided evidence that the new tenants did take occupancy and start to pay rent to the landlord on October 18, 2009. When a tenants' testimony is contradicted by the landlords the tenant must provide corroborating evidence to satisfy the burden of proof. In this instance I find the tenants have not provided sufficient evidence to support their claim and the evidence provided by the landlord shows the new tenants did not take occupancy of the rental unit until November 01, 2009. I further find the tenants did not provide the landlord with the required two month notice according to their tenancy agreement. Consequently, I find they are not entitled to recover the amount of \$1,333.88 in rent paid from October 18 to 31, 2009 from the landlord and this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim for double their security deposit; Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a

tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I find that the landlord did receive the tenants forwarding address in writing by January 20, 2010. As a result, the landlord had until February 04, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and there is no evidence that the landlord filed a claim to keep it. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenants double the amount of the security deposit to the sum of **\$2,900.00**.

The landlord does not dispute that the tenant paid all the utility bills for the property and does not dispute that he owes them 25% of these costs to the sum of **\$108.41**.

The landlord requests to keep the security deposit in compensation for damages to the rental unit. However, as this is the tenants' application the landlords request cannot be heard at this time. The landlord is at liberty to file his own application for Dispute Resolution.

As the tenant has been partially successful with his claim I find he is entitled to recover his **\$50.00** filing fee from the landlord. The tenant is entitled to a Monetary Order as follows:

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|---|-------------------|
| Double the security deposit | \$2,900.00 |
| Filing fee | \$50.00 |
| Total owed to the tenant by the landlord | \$3,058.41 |

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,058.41**. The order must be served on the respondent 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 14, 2010.

Dispute Resolution Officer