

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord was seeking an order of possession and a monetary order. The tenants were seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants. One of the landlords did leave the call during the hearing but the other landlord remained and the hearing continued.

The parties confirmed the tenants moved out of the rental unit by June 30, 2010 and the tenants vacated the unit at that time. As such the landlord no longer requires an order of possession. I amend the landlord's application to exclude the matter of an order of possession.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; compensation for loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 23, 2010 for a 3 month fixed term tenancy beginning on March 1, 2010 and ending on May 31, 2010 for a monthly rent of \$1,400.00 + 40% of utilities due on the 1st of the month, stipulating that the tenant must move at the end of the tenancy;

- A copy of the previous tenancy agreement signed by the parties on October 29, 2009 for a 4 month fixed tenancy agreement beginning on November 1, 2009 and ending on February 31, 2010, a security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid;
- A copy of a new tenancy agreement with new tenants that was to take effect on June 1, 2010;
- A copy of a letter sent to the new tenants confirming that the landlord could not provide the rental unit as per the tenancy agreement and the payment of \$1,500.00 the landlord paid to the next tenants as compensation for not being able to fulfil the tenancy agreement;
- Copies of monthly bills from the gas provider for the length of the tenancy providing documentation for the tenants portion of gas charges;
- Copies of monthly bills from the hydro provider for the length of the tenancy providing documentation for the tenants portion of hydro charges;
- A copy of a document entitled Utility Account Details – showing billing periods and amounts for specific periods from May 2009 to May 2010;
- And a summary of the landlord's final calculations showing the tenants owe \$804.37 for gas, hydro and utilities.

The parties agree that the original tenancy was for a 4 month period and that prior to the end of that tenancy the landlords approached the tenants to enter into a new fixed term tenancy. A new agreement was signed by the parties on January 23, 2010, over a month prior to the end of the original fixed term.

The tenants testified that they did not move out at the end of the tenancy because the landlord had always indicated that the parties did not have to worry about the fixed term of the tenancy as they felt it was on a month to month basis. As such, the tenants, on May 31, 2010, issued the landlord a one month notice to end tenancy effective June 30, 2010.

The landlord testified that they had been showing the rental unit during the month of May 2010 to potential renters and the tenants should have known they were seeking new tenants for the end of the fixed term. The tenants contend that as the rental unit had been previously been for sale they assumed the viewers were for purchase not for rental.

The tenants further testified that when they moved into the rental unit that the unit was not cleaned and the landlords agreed to no longer charge the tenants for "utilities". In this instance the parties include: water, sewer and garbage collection under the term utilities – gas and hydro are considered separately.

The landlord contends that he had been waiting for the tenants to provide him with receipts for cleaning and was holding all the utilities charges until such time as they were submitted and then he would charge accordingly for the utilities.

The landlord noted in his documents that the tenants had made payments totalling \$497.62 towards gas and hydro. The tenants contend that they made payments of \$722.07, in the following instalments: February 2, 2010 of \$214.02; April 22, 2010 of \$283.60; and May 21, 2010 of \$224.45. Once going through these payments during the hearing with the landlord reviewing his spreadsheet, he agreed that the tenants had made these payments totalling \$722.07.

Analysis

In order to be successful in a claim of loss or damages, the party making the claim must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That that loss or damage results from a breach of the Act, regulation or tenancy agreement;
3. The value of the loss; and
4. The steps taken by the party making the claim to mitigate any losses.

Section 38(1) of the *Act* states a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit to the tenants or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

The landlord submitted an Application to claim against the security deposit on July 12, 2010, as such, I find the landlord has complied with Section 38(1) of the *Act* and therefore is not required to pay the tenants double the amount of the security deposit.

Section 44 of the *Act* stipulates a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. I accept the landlord anticipated the tenants moving out at the end of May 2010, and found renters who had entered into a tenancy agreement with an effective date of June 1, 2010.

While the existing tenants did pay rent for the month of June, 2010, I find they failed to comply with the tenancy agreement thus causing the landlord to have to break the new tenancy agreement with the new tenants.

As a result of the landlord not being able to provide the new tenants with possession of the rental unit, I accept, based on the evidence submitted, the landlord paid the new tenants \$1,500.00 for losses they incurred.

As I have found the tenants' actions caused these events, in breach of their tenancy agreement, I find the landlord is entitled to this amount in compensation from the tenants.

In relation to the landlord's claim for gas, hydro and utility charges, I find the landlord has provided sufficient evidence to establish a claim for gas and hydro charges. However, the document submitted by the landlord for the utility charges entitled "Utility Account Details" has no municipal or district logo or any other indication that it is a record from the service provider of costs owed by the landlord for utilities. As such, the landlord has failed to establish the tenants owed any amounts for "utilities".

As to the amount of compensation for hydro and gas, I find the landlord has established the following value, based on submitted bills:

Hydro – \$700.07

Gas – \$196.93 *

Total - \$897.00 – less \$722.07 paid – total owed of \$174.93

* The landlord's calculation included two bills that were listed as credits that had been added into as debits to the gas account. The correction results in a different of \$43.61 in the tenant's portion of the gas bill.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1724.93** comprised of \$1,500.00 compensation for loss; \$174.93 for gas and hydro charges and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit, pet damage deposit and interest held in the amount of \$1,400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$324.93**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: November 29, 2010.

Dispute Resolution Officer