

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing. The female landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent the tenant(s) a copy of the landlords' application for dispute resolution hearing package by registered mail on August 4, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlords have served the application for dispute resolution to the tenant(s) in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to retain the tenants' security deposit? Are the landlords entitled to recover their filing fee for their application from the tenants?

Background and Evidence

This month-to-month tenancy commenced on May 1, 2010. Monthly rent was set at \$900.00 and monthly utilities were set at \$135.00, payable on the first of each month. The landlord testified that she continues to hold the tenants' \$450.00 security deposit. The landlord submitted written evidence of the tenants' July 1, 2010 notice to end this tenancy by August 1, 2010. She said that the tenants vacated this tenancy by July 24, 2010. The landlord testified that the tenants' failure to provide notice before July 1, 2010, compromised her ability to place advertisements in the two community newspapers where she advertised the availability of this rental unit. She said that she

was able to re-rent the premises to another tenant on August 15, 2010, for occupancy on October 1, 2010. She asked for authorization to retain the tenants' security deposit to compensate for losses in rent incurred for half of August 2010 and for untrue allegations raised by the tenants regarding the rental premises.

Analysis

After considering the written and oral evidence presented by the landlord, I find no reason why the landlords should retain the tenants' security deposit. Although the tenants did not provide the landlords with a full one month's notice to end this tenancy, the landlord testified that she would not have been able to advertise the tenancy any earlier had the tenants given the extra day's notice required to end this tenancy in compliance with the *Act*. She said that the two weekly newspapers where she advertised the rental unit only publish on Tuesday and Wednesday. Whether the tenants provided their notice on Wednesday, June 30 or Thursday, July 1, the landlords would still have been placing their initial advertisements for this rental unit in the following week's newspapers. When the rental unit was advertised, the landlords accepted an offer of tenancy that did not commence until October 1, 2010. Under these circumstances, I do not find that the tenants were responsible for the landlords' loss of rental income for any portion of August 2010.

The landlord also testified that statements made by the tenants caused the landlords to test the water quality of the well that services this rental property. The landlord testified that the water quality tests identified no problems with water quality. I do not find that the tenants should be held responsible for the landlords' well testing costs.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution. The landlord filed for dispute resolution on August 3, 2010, within 15 days of the end of this tenancy. By then, she said she had obtained the tenants' forwarding address in writing.

As I find that the landlords provided insufficient evidence to support their application to retain the tenants' security deposit, I dismiss their claim. I find the landlord is required to return the tenants' security deposit plus interest in accordance with section 38 of the *Act*. I issue a monetary Order in the tenants' favour. No interest is payable. Since the landlords' application has been unsuccessful, I make no order regarding their application to recover their filing fees from the tenants.

Conclusion

I dismiss the landlords' application to retain the tenants' security deposit and to recover their filing fees for this application. I issue a monetary Order in the tenants' favour in the amount of \$450.00 to obtain a return of the tenants' security deposit.

The tenants are provided with these Orders in the above terms and the landlords must be served with a copy of these Orders as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.