

DECISION

Dispute Codes MNDC, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for their application from the landlord pursuant to section 72.

Since the tenants' application clearly identified additional issues in their application for a monetary award of \$6,345.25, at the hearing I revised their application to include their request for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. Also at their request, I reduced the amount of their application for a monetary order to \$5,495.25 to reflect the landlord's return of their security deposit shortly after they applied for dispute resolution. They withdrew their application for a return of their security deposit at the hearing.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receiving a copy of the other party's dispute resolution hearing package by registered mail. They also confirmed receiving one another's evidence packages. I am satisfied that both parties served these documents in accordance with the *Act*.

Issues(s) to be Decided

Are either of the parties entitled to monetary Orders? Are either of the parties entitled to recover their filing fees for their applications?

Background and Evidence

The tenants signed a one-year fixed term tenancy agreement on September 22, 2010 to commence this tenancy on October 1, 2010. According to the terms of their tenancy agreement, they were to pay \$1,700.00 in monthly rent plus electricity. Heat was to be included in the tenants' rent. The landlord has returned the tenants' security deposit of \$850.00 paid on September 22, 2010.

The tenants sent the landlord a written notice to end tenancy by registered mail on October 12, 2010, as they were dissatisfied with their interaction with the landlord in this tenancy. Although the tenants performed considerable work on the rental unit in preparation for their move-in, they never did occupy the rental unit. The landlord and her husband testified that they advertised the rental unit on two rental websites and were able to rent the suite for \$1,700.00 per month as of November 1, 2010.

The tenants' revised application for a monetary Order of \$5,495.25 included requests for recovery of the \$1,700.00 in October 2010 rent paid to the landlord, items that were not as they expected them to be when they commenced this tenancy, items that they purchased for the rental unit with the landlord's authorization, and work they performed in the rental unit. They applied for the return of their filing fee.

The landlord applied for a monetary Order of \$3,400.00 plus the recovery of her filing fee which she identified as the "penalty" owed to her by the tenants in accordance with the provisions of the Residential Tenancy Agreement. At the hearing, the landlord testified that she was unaware that such "penalties" are not permitted under the *Act*.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues in dispute, turned their minds to compromise and were able to reach a settlement of all of the issues between them on the following terms.

1. The parties agreed that the landlord will pay the tenants \$1,840.45 in order to resolve all outstanding financial matters in dispute arising out of this tenancy.
2. The parties agreed to bear their own costs of filing their applications for dispute resolution.
3. The parties agreed that these particulars comprise the full and final settlement of all aspects of this dispute for both parties and that neither party will submit another application to the Residential Tenancy Branch arising out of this tenancy.

Conclusion

In order to give effect to the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$1,840.45. I deliver this Order to the tenants in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement.

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*.