

DECISION

Dispute Codes MNR, MNDC, MNSD, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent and utilities, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to the monetary relief sought?

Background and Evidence

This tenancy began on October 1, 2010. The parties had a verbal tenancy agreement. The Landlord testified that the rent was \$600.00 per month and that the Tenants had paid a security deposit of \$300.00. The Tenants did not dispute this.

The Landlord testified that the Tenants had been short on their rent payments for several months. The Landlord submitted evidence that the Tenants owed \$1,009.33 in rent from October of 2010 to the end of January 2011.

The Landlord testified that he had discussed an arrangement with the Tenants regarding the payment of utilities. He testified and submitted in evidence an accounting that they had failed to pay \$581.00 in utilities.

The Landlord submitted in evidence a note dated December 23, 2010, from the Tenants which stated they, "... will be moving out of Apt due to sewer and heat problems..."
[Reproduced as written.]

The Tenants testified that the rental unit had a sewer smell in it which they asked the Landlord to repair several times. The Landlord received one note from the Tenants requesting the problem be fixed in two days.

The male Tenant testified he quit paying the rent due to the smell. He further testified that the Landlord had told him to move out if he could not pay the rent or utilities.

On January 8, 2011, the Landlord served the Tenants with a Notice to End Tenancy for non-payment of rent. The Tenants vacated the rental unit on or about January 9, 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenants have breached section 26 of the Act by failing to pay the Landlord \$1,009.33 in rent from October of 2010 to the end of January 2011.

Under section 26 of the Act, regardless of any breaches of the Act by the Landlord, the Tenants could not withhold rent unless they have some authority under the Act, such as an order reducing rent. In this instance the Tenants had no authority under the Act to withhold rent. As explained to the Tenants during the hearing, if they felt there were problems with the rental unit they should have filed an Application to compel the Landlord to make repairs and to have their rent reduced until such repairs were made. They did not do this, they simply stopped paying rent.

The Tenants also ended the tenancy without giving the Landlord proper notice and therefore, they owe the rent payable for January 2011. The Tenants did not have to vacate the unit because of the alleged verbal notice from the Landlord. Verbal notice to end a tenancy is not sufficient under the Act.

In regard to the utilities owed, I find the Landlord failed to provide sufficient evidence, such as the utility invoices, to prove this part of the claim. The claim for utilities is dismissed without leave.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find the Landlord has established a total monetary claim of **\$1,059.33**, comprised of the balance of rent owed and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$300.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$759.33**.

This order 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: March 25, 2011.

Residential Tenancy Branch