

## **DECISION**

Dispute Codes            OPR, MNR, MNDC, MNSD, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent and utilities, for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulation or tenancy agreement and to recover the filing fee. The landlord also seeks an Order to keep all or part of the security deposit and other issues. The landlord has withdrawn her application for an Order of Possession as the tenants have moved from the rental property.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenants by registered mail on January 23, 2010.

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 landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

Both Parties agree that this tenancy started on February 01, 2009. Rent for this property was \$1,195.00 per month and was due on the first of each month. The tenants paid a security deposit of \$597.50 on January 31, 2009.

The landlord claims that the tenants sent her an e-mail on December 14, 2009 in which they gave her 30 days notice to end the tenancy. The tenants indicated on this e-mail that they would vacate the rental property on January, 15, 2010. The Landlord e-mailed the tenants back on the same day and informed them that they would not be able to end the tenancy until January 31, 2010. She also and informed them that she would not accept an e-mail as legal notice to end the tenancy. The landlord informed the tenants that they must give her a written, signed notice of their intention to end the tenancy on January 31, 2010 before December 31, 2009.

The landlord claims the tenants did not send a written notice by December 31, 2009. The tenants paid \$600.00 in rent for January, 2010 and moved from the rental unit on January 15, 2010. The landlord states that the tenants did not provide her with correct notice to end the tenancy and the tenancy continued until January 31, 2010. The landlord seeks the remainder of rent for January 2010 of \$595.00. The landlord states as she did not get written notice from the tenants she could not make attempts to re-rent the property until after they moved out. At this time the landlord advertised the property for rent on the internet, local newspaper and word of mouth. The property was not re-rented until March 01, 2010. The landlord seeks a loss of revenue for February of \$1,195.00.

The landlord claims the tenants owe utilities for Terasan Gas for January, 2010 of 94.60 and \$26.57 for February, the landlord gave an estimated amount of \$180.00 on her application for these months. The landlord also claims the tenants owe utilities to the City for electric and water charges which she has estimated to be \$200.00 for January and \$200.00 for February, 2010. This account was in the tenants name but was ended on January 15, 2010 and the landlord had to put the account into her own name from this date. The landlord has not presented any bills from the city or Terasan Gas to confirm amounts outstanding but states the Gas bill is \$94.60 for January and \$26.57 for February, 2010.

The landlord seeks to be reimbursed for the costs incurred in filing her application. The landlord had estimated these costs to be \$120.00 including the filing fee. The landlord now states these costs to be approximately \$15.00 for each of the three registered mail packages sent to a total

cost of \$45.00 plus \$50.00 filing fee. The landlord has not provided mailing receipts for these costs.

The landlord seeks costs for cleaning the carpets in the rental unit. These costs were estimated at \$210.00; however the landlord has adjusted this cost to \$100.77 now the carpets have been cleaned. The landlord agrees that in her e-mail to the tenants concerning carpet cleaning she stated she would determine if the carpets needed to be cleaned at the end of the tenancy after the inspection carried out by her agent and if the tenants could produce a carpet cleaning receipt from the beginning of their tenancy when they claimed they had cleaned the carpets. The landlord argues that the tenants have not provided her with the carpet cleaning receipt and although her agent noted that there was no damage to the carpets they still required cleaning after a tenancy of one year as specified in the tenancy contract.

The landlord seeks to keep the tenants security deposit in partial payment of the outstanding rent and cleaning costs.

The tenant's argue that the landlord has not provided any evidence that she attempted to re-rent the property by advertising it. However, the tenant's testify that the landlords' agent did show the property to prospective tenants prior to them moving out.

The tenants testify that they did give the landlord written notice and e-mail is an acceptable form of communication and has always been used between the landlord and tenants 98% of the time. The tenants felt that they had given the 30 days notice that was required to end the tenancy. The tenants claim they sent the landlord a letter on January 06, 2010 confirming the details of their earlier notice that they will be vacating the rental property on January 15, 2010. The tenant felt that the landlord had accepted their notice as she said she would not do the weather proofing to the house as the tenants were moving out.

The tenants testify that they have always paid the utilities and these were cancelled on January 16, 2010 when they had vacated the rental property. The tenants accept that they may owe a small amount towards the gas bill for January, 2010 but this would be minimal as they had moved out and no gas would have been used with the exception of the furnace ticking over and the hot water tank. The tenants claim that the landlord has not given them a bill for this period.

The tenants have provided a City utility bill for \$109.47 from December 16, 2009 to January 16, 2009 which they have paid.

The tenants testify that the e-mail received by them from the landlord clearly states that if the landlords' agent deems the carpets to be clean at the end of the tenancy that they would not have to pay a cleaning charge. The tenants state that they did clean the carpets at the beginning of the tenancy; however as they borrowed a cleaning machine they did not have a receipt for this work. The tenants state that no issues were raised at the move out condition inspection about the carpets not being cleaned and the landlords' agent told the tenants the carpets were fine.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; with regard to the landlords claim for unpaid rent for January; s. 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord Notice to end the tenancy effective on a date that is a) not earlier than one month after the date the landlord receives the notice and b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Consequently I find the tenants gave the landlord Notice to end tenancy on December, 14, 2009 with an effective date of January 15, 2010. As this date would not comply with s. 45 of the Act I find the earliest day the tenants could end the tenancy would be January 31, 2010.

The landlord also argues that the tenants did not comply with s. 52 of the Act with regard to Form and Content of the Notice. The landlord argues that the tenants gave Notice by e-mail which is not a legal form of notice. The landlord also argues that she requested the tenants send her written notice, signed and dated to end the tenancy before December 31, 2009 which would end the tenancy by January 31, 2009. The landlord argues that despite giving the tenants this information they did not respond or honor her request for the Notice to be in writing.

I find the tenants e-mail sent to the landlord on December 14, 2009 substantially complies with s. 52 of the Act. It was sent from the tenants e-mail account which has been the normal method of communication between the landlord and tenants throughout the tenancy. Therefore, I find it would be unreasonable of the landlord not to accept this as written notice to end the tenancy

despite the effective date of the Notice being incorrect. Consequently, I find the landlord has established her claim for unpaid rent for January, 2010 of **\$595.00** and dismiss her claim for unpaid rent for February, 2010 without leave to reapply.

With regard to the landlords claim for unpaid utilities; I find the tenants did pay the City utilities up to January 16, 2010. I find as these bills were for electricity and water if the property was vacant until March 01, 2010 then the tenants would not be responsible for further utility bills after January 16, 2010 as little or no power or water would be used. The landlord also claims Terasan Gas bills outstanding at \$94.60 for January, 2010 and \$26.57 for February, 2010. The tenants agree that a small amount of gas would be used in the property to keep the furnace going and provide hot water. Therefore, I find that the tenants owe utilities for gas usage for January, 2010, as it has been established that the tenancy could not end until January 31, 2010. However, the landlord has not provided this utility bill to the tenants or in evidence to determine the actual amount of the bill. Consequently, I dismiss this part of her claim with leave to reapply.

With regard to the landlords claim for costs incurred in filing her application; the landlord originally estimated these costs to be \$120.00 however she finds that the costs incurred were lower than this at \$15.00 for each registered mail sent. However, the landlord has not provided receipts for the registered mail to determine the actual costs incurred. Therefore, I dismiss this part of the landlords claim with leave to reapply.

With regard to the landlords claim for carpet cleaning; s. #1 of the Residential Tenancy Policy Guidelines states that a tenant is responsible for periodic cleaning of the carpets during a tenancy. Generally at the end of a tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. The tenants argue that the landlord had agreed that they did not have to pay to have the carpets cleaned if they could produce the receipt showing they had cleaned the carpets at the start of the tenancy or if the landlords' agent deems the carpets to be clean at the move out condition inspection. The move in and out condition inspection report indicates that the carpets were satisfactory at the beginning and end of the tenancy.

I find in this instance that the tenants were asked to produce a receipt to show the landlord that they did clean the carpets at the start of the tenancy and the landlord testifies that her agent stated that although there was no damage to the carpets they would require cleaning for the new tenants. I accept that the tenants did not clean the carpets at the end of the tenancy and

have not provided any evidence that they cleaned the carpets at the start of the tenancy pursuant to #1 of the Policy Guidelines. In this instance the burden of proof lies with the landlord to prove that she had the carpets cleaned at the end of the tenancy and the actual cost incurred in cleaning the carpets. While the landlord at first estimated this cost at \$210.00 then revised it to \$100.77 she has not provided any evidence to determine the actual cost of carpet cleaning. Consequently, this part of her application is dismissed with leave to reapply.

**I Order** the landlord to keep the tenants security deposit of **\$597.50** in partial payment of the rent arrears and other costs awarded.

As the landlord has been partially successful with her claim I find she is entitled to recover half the filing fee (**\$25.00**) from the tenants for the cost of her application.

A Monetary Order has been issued for the following amount:

Outstanding rent for January, 2010	\$595.00
Less security deposit	(-\$597.50)
<b>Total amount due to the landlord</b>	<b>\$22.50</b>

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$22.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords claim for unpaid rent for February, 2010 is dismissed without leave to reapply.

The landlords claim for City utility bills is dismissed without leave to reapply.

The remainder of the landlords claim is dismissed with leave to reapply.

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 04, 2010.

---

Dispute Resolution Officer