

Decision

Dispute Codes:

MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for damages to the rental unit, loss of rent, and recovery of the filing fee.

Service of the hearing documents was done via registered mail on January 16, 2009, copies of the mail receipts were entered into evidence. The tenant was deemed to be served the hearing documents on January 21, 2009, the fifth day after they were mailed pursuant to section 89 of the *Act*.

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.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.
- Whether the landlord is entitled to monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.
- Whether the security deposit can be used to offset an order for monetary compensation under section 72(2)(b) of the *Act*.

Background and Evidence

The tenancy was a month to month tenancy which commenced on February 1, 2008 and terminated on December 12, 2008 when the landlord was granted an Order of Possession for unpaid rent. The rent was \$925.00 per month and the tenant paid a \$462.50 security deposit on February 1, 2008.

The landlord provided evidence that the hearing documents were sent to the tenant on January 16, 2009 via registered mail. Canada Post receipts were supplied.

The landlord testified that the tenant failed to pay rent for October, November and December 2008 which caused him to request and receive an Order of Possession. The Order was served on the tenant on December 11, 2008 and she moved out on December 12, 2008. The landlord is claiming for loss of rent for October and November at \$925.00 per month and \$358.00 for December 2008 rent which totals \$2,208.00.

The tenant testified that she did not pay rent for October, November, or December, 2008, and gave notice to end the tenancy via an e-mail in early December, after her car was "swiped" while it was parked at the rental building. The tenant stated that she moved out on December 12, 2008, the day after being served the Order of Possession.

The landlord provided a copy of the move out inspection completed on December 12, 2008. The tenant signed the move out inspection December 12th under move out inspection and for the Security Deposit Statement to authorize the landlord to deduct any balance due the landlord from the security deposit.

The landlord stated that the tenant had permission to paint the unit but that she also put up wallpaper which was not permitted. The landlord was not aware of the wallpaper until December when he served the tenant with an Order of Possession. The landlord is

submitting a monetary claim for the removal of the wallpaper, the costs incurred to repaint, and repair the unit in the amount of \$320.00.

The tenant testified that the landlord had requested that she move from one building to another. She willingly moved with an agreement by the landlord that she would be given the opportunity to do work on the rental building. The tenant stated that she subsequently entered into a contract with the landlord to paint units in the rental building and worked on her rental unit first.

The tenant stated she painted her rental unit with her own existing paint and materials and had permission from the landlord to do so. The tenant confirmed that she did not have permission to put up wallpaper.

Analysis

I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test for Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Repairs and painting - \$320.00. After explaining the test for damage and loss of claims as listed above, the landlord withdrew his claim for \$320.00 for repairs and painting.

Lost rent - \$2,208.00. The landlord is claiming for loss of rent for October and November at \$925.00 per month and \$358.00 for December 2008 rent which totals \$2,208.00. The tenant was advised that she must pay rent when it is due, pursuant to section 26 (1) of the *Act*, and that neither the landlord nor the tenant can contract out of the *Act*, pursuant to section 5 of the *Act*. I find that this claim is allowed under the *Act*.

Filing Fee - \$50.00 I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant pursuant to section 72(1) of the *Act*.

I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$462.50 plus interest calculated to March 18, 2009 of \$6.35.

Conclusion

The landlord has withdrawn his monetary claim of \$320.00 for repairs and painting.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Lost Rent	\$2,208.00
Filing fee	50.00
Sub-Total	\$2,258.00
Less Security Deposit & Interest (462.50 + 6.35)	- 468.85
TOTAL MONETARY ORDER	\$1,789.15

The landlord's copy of this decision is accompanied by a Monetary Order for \$1,789.15. The order must be served on the respondent and is enforceable through the Provincial Court of British Columbia.

March 18, 2009
Date of Decision

Dispute Resolution Officer