

DECISION

Dispute Codes MNDC OLC ERP RP PSF FF

Preliminary Issues

The tenant testified that she has vacated the rental unit and no longer requires and Order to force the landlord to make repairs or complete construction to the rental unit. The tenant has withdrawn her request for an Order to have the landlord comply with the *Act*, make emergency repairs for health or safety reasons, and to provide services or facilities required by law. The tenant wishes to proceed with her application for a Monetary Order for money owed for damage or loss under the *Act* and to recover the filing fee from the landlord.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed for damage or loss under the *Act* and to recover the filing fee from the landlord for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 20, 2009. A copy of the Canada Post receipt was entered into evidence. The landlord was deemed to be served the hearing documents on March 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided are:

- whether the tenant is entitled to a monetary claim for money owed for damage or loss under section 67 of the *Residential Tenancy Act*
- whether the tenant is entitled to recover the cost of the filing fee for this application under section 72 of the *Residential Tenancy Act*

Background and Evidence

The tenancy began on December 1, 2008 and was a month to month tenancy which ended on February 28, 2009. The monthly rent of \$600.00 was payable on the 1st of each month and the tenant paid \$600.00 as a security deposit on or before December 1, 2008. These facts are not in dispute.

The tenant testified that the landlord did not conduct a move-in or a move-out inspection report but that when she initially looked at the rental unit the landlord told her that he would complete construction, such as installing exterior stairs and putting covers on light switches and electrical outlets, prior to her taking possession. The tenant stated that when she took possession of the rental unit these items were not completed and that she had requested, on numerous occasions, that the landlord finish the construction work.

The tenant testified that she felt she could no longer live in the rental unit as she was pregnant and so on February 13, 2009 the tenant gave the landlord notice that she would be ending the tenancy effective February 28, 2009. The tenant stated that she felt she had the right to end the tenancy early because the landlord failed to complete the work and repairs that he had previously promised to do.

The landlord testified that he tried to gain access to the rental unit to complete some of the repairs but that the tenant refused him entry.

The tenant stated that she requested to meet with the landlord on February 27, 2009 to turn in her keys and for the landlord to return her damage deposit and unused post dated rent cheques. The tenant provided a document in her evidence which states that the landlord failed to show up at the rental unit on February 27, 2009 so the tenant left the keys in the landlord's mailbox along with a note requesting the landlord to forward her damage deposit and unused post dated rent cheques to the tenant.

The tenant testified that the landlord cashed the posted dated rent cheque for March, on March 4, 2009, without any notice or discussion with her. The tenant testified that she received a cheque from the landlord for the damage deposit refund of \$600.00 plus \$5.00 interest on March 10, 2009.

The landlord stated that he is running a business and that he needs to be able to count on the rent payments with proper notice if the payments are going to change, so he can meet his financial obligations. The landlord testified that the tenant did not give a proper 1 month notice to end tenancy, that the landlord was not able to re-rent the unit right away, and that the landlord felt he was entitled to one more months rent which is why the landlord cashed the March 2009 rent cheque.

The tenant is submitting a monetary claim for reimbursement of the \$600.00 the landlord took for March 2009 rent and to recover the cost of her application for dispute resolution.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the tenant 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 tenant 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 tenant 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 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

Both the landlord and tenant testified that the rent was \$600.00 per month and that the tenant was required to pay a security deposit of \$600.00. I find that the landlord has contravened Section 19(1) of the *Act* which stipulates that a landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

The landlord admitted that he cashed the tenant's post dated cheque of \$600.00, after the tenant vacated the rental unit. The landlord felt he was owed the additional payment because the tenant failed to give proper notice and the landlord was not able to re-rent the unit right away.

I do not accept the landlord's argument that the landlord's violation was somehow excused due to the tenant's alleged failure to comply with the *Act* or agreement. Even if the tenant was found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a landlord.

Section 44(1)(d) of the *Residential Tenancy Act* stipulates that a tenancy ends when the tenant vacates or abandons the rental unit and Section 3 of the *Residential Tenancy*

Policy Guideline states that a tenant is not liable to pay rent after a tenancy agreement has ended.

Based on the aforementioned I hereby find that the tenant has met all the requirements for the test for loss and I hereby find in favor of the tenant's application for a monetary claim and to recover the filing fee from the landlord as follows:

Rent taken by the landlord for March 2009	\$600.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$ 650.00

Rule 5.1 of the *Residential Tenancy Branch Rules of Procedures* stipulates that any party making a cross-claim or cross-application against the applicant must file an Application for Dispute Resolution. In this situation if the landlord wishes to make a claim against the tenant, the landlord is at liberty to file an application for dispute resolution.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$650.00. The order must be served on the landlord and is enforceable through the Provincial Court 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: May 12, 2009.

Dispute Resolution Officer