

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for loss of rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 31, 2009, to the forwarding address provided by the tenant. Mail receipt numbers were provided in the landlord's verbal testimony. The tenant was deemed to be served the hearing documents on April 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

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

- Whether the landlord is entitled to a Monetary under section 67 of the *Residential Tenancy Act* for a claim for loss of rent
- Whether the landlord is entitled to a Monetary Order under section 72 of the *Act* to recover the cost of the filing fee for this application.

Background and Evidence

The tenant completed a pre-approval application form on February 27, 2009 to qualify to rent a unit from the landlord. On March 6, 2009 the tenant signed an offer to lease suite

1780 from the landlord, with a move-in date of March 19, 2009, and paid a security deposit of \$375.00.

The landlord testified that on March 11, 2009, the tenant submitted a written notice to end the tenancy prior to occupying the rental unit. The landlord stated that they were not able to re-rent the unit until April 7, 2009 and has requested to retain the security deposit for loss of rent and to recover the cost of the filing fee from the tenant.

Analysis

The documentary evidence supports the landlord's testimony that the tenant signed the offer to lease, paid the security deposit, was scheduled to take possession of the rental unit on March 19, 2009, but then issued a written notice to cancel the lease on March 11, 2009, prior to taking possession of the rental unit.

In regards to an Applicant's right to claim damages from the Respondent, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

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

In this instance I find that based on the testimony and documentary evidence the landlord has met the requirements of the test listed above and that they mitigated their losses by re-renting the unit as of April 7, 2009.

Monetary Order – I find that the landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Loss of Rent March 19, 2009 to April 6, 2009	\$375.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$425.00
Less Security Deposit of \$375.00 plus interest of \$0.00	- 375.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$50.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court and enforced

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 22, 2009.

Dispute Resolution Officer