

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, unpaid utilities, to keep all or part of the security deposit, and money owed or compensation for damage or loss under the *Act*, and to recover the cost of the filing fee from the tenant for this application.

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 April 15, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The tenant was deemed to be served the hearing documents on April 20, 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 his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the landlord entitled to a monetary order under Section 67 of the *Residential Tenancy Act* for unpaid rent, unpaid utilities, allowed to retain the security deposit under section 38 of the *Act*, and to recover the cost of the filing fee from the tenant pursuant to Section 72 of the *Act*?

Background and Evidence

The tenancy began on December 1, 2008 as a fixed term which expired on March 1, 2009 and then converted to a month to month tenancy on March 1, 2009. Rent was

payable on the first of each month in the amount of \$1,525.00 and the tenant paid a security deposit of \$750.00 on December 1, 2008.

The landlord testified that the tenant negotiated the tenancy agreement to have rent at \$1,525.00 per month and that this amount would include the cost of hydro.

The landlord testified that the tenant did not pay rent for February 2009 and March 2009. The landlord stated that when he tried to collect the rent from the tenant she told him on several occasions that she would be moving out. The landlord testified that he requested something in writing from the tenant to state she was moving out, that the landlord requested the tenant's forwarding address, and that the landlord had made arrangements to pick up the letter from the tenant on March 3, 2009. The landlord confirmed picking up the tenant's letter, with the tenant's forwarding address, on March 3, 2009.

The landlord stated that when February and March 2009 rent were not deposited into the landlord's account by March 3, 2009 he issued a 10 Day Notice to End Tenancy to the tenant for unpaid rent and unpaid utilities. The landlord stated that he picked up the tenant's letter to end tenancy and posted the 10 Day Notice to End Tenancy on the tenant's door on March 3, 2009.

The landlord testified that neighbours advised him that the tenant vacated the rental unit on approximately March 15, 2009 and that the laundry room door, which leads into the carport, was left unlocked and the rental unit keys were left on the laundry room counter.

The landlord advised that he advertised the rental unit in the local newspaper and on two websites during March 2009 and that he has been able to re-rent the unit effective May 1, 2009. The landlord testified that the new renter(s) viewed the rental unit in

March 2009, signed the new tenancy agreement on April 30, 2009 and took possession to May 1, 2009.

The landlord did not conduct a move-out inspection in the presence of the tenant as the tenant abandoned the rental unit.

The landlord is submitting a monetary claim for unpaid rent for February and March 2009 and for loss of rent for April 2009, unpaid utilities in the amount of \$238.01, and to recover the cost of the filing fee of \$50.00.

Analysis

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, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant 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 regards to the landlord's right to claim damages or loss from the tenant, 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.

Unpaid Rent for February and March 2009 – Section 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement. Based on the evidence and testimony I find that the tenant has failed to comply with the *Act* and that the landlord has met the test for loss, as listed above. I hereby find in favor of the landlord's claim for unpaid rent in the amount of \$1,525.00 for February and \$1,525.00 for March 2009 for a total of \$3,050.00.

Loss of Rent for April 2009 – The tenant provided the landlord a written notice to end tenancy which did not comply with Section 45 of the *Act* which states that a tenant may end a periodic tenancy by giving the landlord notice effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable. One could argue that the tenant ended the tenancy based on the notice to end tenancy and that she vacated the rental unit just prior to the date she was instructed to on the 10 Day Notice to End Tenancy. I find that regardless of the actual date the tenant vacated the rental unit, the tenancy ended as a result of the tenant's breach caused by the tenant not paying rent when rent is due.

Section 7 of the *Act* states that a landlord who claims a loss that results from the other's non-compliance with the *Act* or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss; I find that the landlord has complied with Section 7 by advertising the rental unit soon after the tenant vacated the unit. I find that the landlord has met the test for loss as listed above and find in favor of the landlord's claim for loss of rent for April 2009 in the amount of \$1, 525.00.

Unpaid Utilities – The landlord testified that the cost of hydro was included in the tenant's monthly rent of \$1,525.00. Based on the testimony I find that the landlord has not met the test for loss for unpaid utilities and I hereby dismiss the landlord's application without leave to reapply.

Request to retain the security deposit in satisfaction of monetary claim – The landlord has requested to keep the security deposit of \$750.00 plus interest in partial satisfaction of his claim. Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. Based on the above the landlord would have had to file his application for dispute resolution no later than March 30, 2009, fifteen days after the tenancy ended on March 15, 2009. The landlord's application was filed at the *Residential Tenancy Branch* on April 14, 2009.

Based on the above, I find that the landlord has failed to comply with Section 38(1) of the *Act* and that the landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit.

Recover the filing fee - I find that the landlord is primarily successful in his claim and I find in favor of the landlord's claim to recover the cost of the filing fee.

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 double the tenant's security deposit, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Unpaid Rent for February 2009 and March 2009	\$3,050.00
Loss of Rent for April 2009	1525.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$4,625.00
Double the security deposit \$750.00 x 2	1,500.00
Interest on \$750 security deposit from Dec. 1, 2008	0.95
Sub total (Monetary Order in Favor of the Tenant)	\$1500.95
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,124.05

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 \$3,124.05. The order must be served on the respondent tenant 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: June 04, 2009.

Dispute Resolution Officer