

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the rental unit, for unpaid rent and to recover the cost of the filing fee for this application from the tenants.

Service of the hearing documents, by the landlord, to the tenants was done in accordance with section 89 of the *Act*, served personally by a process server to each tenant, at the tenants' new residence, on March 18, 2009 at 2:59 p.m. An affidavit of service was entered into the landlord's evidence.

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

The tenants were not represented at the hearing despite being served notice of the hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

At the onset of the hearing the landlord testified that he wished to withdraw his application for damages to the rental unit. The landlord stated that his application for dispute resolution was submitted the day before the hearing for the tenants' application and that after the hearing the landlords regained possession of the rental unit and that the landlord no longer wishes to pursue a claim for damage to the rental unit. The landlord's claim for damages is hereby withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a Monetary Order under Section 67 of the *Act* for damages, loss, and unpaid rent? Is the landlord entitled to offset their monetary claim against the tenants' security deposit pursuant to section 38 of the *Act*, and recover the cost of the filing fee from the tenants under Section 72 of the *Act*?

Background and Evidence

The tenancy began on April 1, 2003 and ended when the tenants vacated the rental unit on the morning of March 18, 2009. The landlord testified that rent was \$750.00 per month and that in August 2008; the tenants signed an agreement allowing the rent to increase to \$810.00 per month effective November 1, 2008.

The landlord testified that during a March 18, 2009 dispute resolution hearing, the landlords were granted an Order of Possession effective 2 days upon service of the Order to the tenants. The landlord stated that it was during that hearing that the tenants informed the landlords that the tenants had vacated the rental unit that morning and that the tenants had left the keys for the rental unit in the mail box. The Order of Possession was formally served to the tenants on May 14, 2009 at 6:10 p.m. by a process server.

The landlord testified that rent was paid directly to him from Social Services and that Social Services were not notified in time of the rent increase for it to be effective November 1, 2008. The landlord stated that the rent was not increased by Social Services until the December 1, 2008 rent payment. The landlord is claiming \$60.00 for unpaid rent for November 1, 2008 as the rent payment received from Social Services did not include the rent increase amount.

The landlord testified that he did not submit a copy of the rent increase agreement into evidence for this hearing and that the landlord did not have a tenancy agreement showing the increased rent amount.

The landlord testified that the tenants did not pay rent for March, 2009 and that they did not vacate the rental unit until March 18, 2009 so the landlord is claiming 18 days rent.

The landlord has requested that his monetary claim be offset against the tenant's security deposit. The landlord testified that the tenants vacated the rental unit March 18, 2009 and that the tenants have never given the landlord their forwarding address in writing. The landlord testified that during the March 18, 2009 hearing the Dispute Resolution Officer requested the tenants' forwarding address in the hearing and that the landlords' lawyer was still dialled into the hearing and heard the tenants' state their new address. The landlord stated that he noticed the new address on the affidavit issued by the process server as the location the process server served the tenants.

The landlord is requesting to recover the cost of the filing fee from the tenants for this application for dispute resolution.

Analysis

Given the evidence before me, in the absence of any evidence from the tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the landlord.

I find that in order to justify payment of damages or loss 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 landlords' right to claim damages 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.

Claim for increased rent amount for November 2008 The landlord has claimed \$60.00 in unpaid rent which is the amount relating to a rental increase, an amount that is greater than the legislated 3.7% allowed for a rental increase in 2008. The landlord has failed to submit documentation into evidence for the alleged agreement between the landlord and the tenants, approving the rent increase, and the landlord testified that he does not have a tenancy agreement signed by the tenants, reflecting the increased rent. I find that there is no documented proof to substantiated the rent increase was accepted by both parties and so I dismiss the landlord's claim without leave to reapply.

Rent for March 1 – 18, 2009 – An Order of Possession was granted to the landlord during the March 18, 2009 hearing, which is the date that the landlord testified, is the date the landlord regained possession of the unit. The documentary evidence states that the tenants were granted one free month rent based on the notice to end tenancy and that the free month credit was taken by the tenants for the month of February 2009 and that the move out date was supposed to be February 28, 2009.

The landlord testified that the tenants did not pay rent for March 2008 and that he is requesting 18 days in unpaid rent. Based on the above I find that the landlord has proven the test for loss, that the tenants over held the rental unit from March 1, 2009 to March 18, 2009. I find that the amount of rent payable that I can consider, as noted above, is \$750.00 per month, the amount prior to the rental increase. I hereby find in

favour of the landlord's claim for unpaid rent for March 2009 in the amount of 18 days x (\$750 x 12month divided by 365 days) = \$443.84

Recovery of the filing fee – As the landlord has been partially successful in his claim I hereby approve his request to recover the cost of the filing fee from the tenants.

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 plus interest, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Unpaid Rent for March 2009 (18 days)	\$443.84
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$493.84
Less Security Deposit of \$375.00 plus interest of \$13.27	- 388.27
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$105.57

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 \$105.57. The order must be served on the respondent tenants 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