

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for unpaid rent, and to recover the cost of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, delivered in person by the landlord to the tenant on May 11, 2009. The tenant confirmed receipt of the hearing documents and receipt of the amended applications.

Both the landlord and tenant appeared, 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.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order under Sections 38, 67, and 72 of the *Residential Tenancy Act* ?

Background and Evidence

The tenancy was a fixed term commencing on February 15, 2009 and scheduled to end on March 1, 2010. The tenant paid a security deposit in the amount of \$650.00 on February 11, 2009 and rent in the amount of \$1,300.00 was due on the first of each month.

The landlord testified that the tenant did not pay March 2009 and April 2009 rent and that she issued the tenant a 10 Day Notice to End tenancy on April 9, 2009 and applied for dispute resolution through the Direct Request Process. The landlord advised that her Direct Request application was dismissed because she had issued the notice to end

tenancy on an old form and she did not complete the section on the form that lists when the tenancy was to end.

The landlord testified that she issued another 10 Day Notice to End Tenancy on April 15, 2009, with a move out date of April 25, 2009 and reapplied for dispute resolution May 4, 2009 and amended the application to include a request for May 2009 rent on May 6, 2009.

The tenant testified that he received the above mentioned copies of the 10 Day Notice to End Tenancy and that he did receive copies of the landlord's original applications and the amended copies.

The landlord testified that after issuing the notices to end tenancy that she received payments from the tenant of \$400.00 during the 3rd week of April and another payment of \$200.00 during the last week of April 2009.

The tenant confirmed that he has not paid March, April and May 2009 rent but that he did make two payments one at \$400.00 and another of \$200.00 during the last two weeks of April 2009. The tenant stated that this unpaid rent was a result of his lack of employment. The tenant disputes owing May 2009 rent as he vacated the rental unit by May 10, 2009 and signed a tenancy agreement at his new location effective May 1, 2009.

The landlord testified that the tenant returned the keys to the rental unit on May 11, 2009 and that the tenant sent her an e-mail with his forwarding address on May 10, 2009.

The landlord advised that she has been able to re-rent the unit effective June 1, 2009 and is claiming for a loss of rent for the full month May 2009 and \$100.00 to recover the costs of both applications for dispute resolution.

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 landlords right to claim a 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.

Claim for unpaid rent. The landlord claims for unpaid rent of March, April and May 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

With respect to the May rent, I find that the tenancy ended as a result of the 10 Day Notice to End Tenancy issued April 15, 2009 but that the tenant remained in possession of the rental unit until he returned the keys to the landlord on May 11, 2009.

Section 3 of the *Residential Tenancy Policy Guideline* stipulates that an over holding tenant (one who remains in possession of the rental unit after the tenancy has ended) is liable to pay occupation rent until the landlord recovers possession of the premises.

I find that the landlord mitigated their losses in compliance with Section 7 of the *Act* by re-renting the unit by June 1, 2009 and I find that, in addition to money owed by the over holding tenant between May 1 and May 11, 2009, the landlord has suffered a loss of rent for the period of May 12, 2009 to May 31, 2009 and that the landlord has proven the test for loss as listed above. Based on the aforementioned I hereby find in favor of the landlord's claim for rent for the full month of May 2009.

Filing Fee - I find that the landlord has succeeded in large with this application and that she should recover only one of the filing fees from the tenant. The first filing fee was paid by the landlord on an application that was dismissed based on a landlord's error and so I find that the tenant should not bear the cost of the landlord's error.

Claim to keep all or part of security deposit. 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 \$650.00 plus interest of \$0.00 for a total of \$650.00

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:

Unpaid Rent for March, April, and May, 2009 3 x \$1,300.00	\$3,900.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$3950.00
LESS payments made during April 2009	600.00
Less Security Deposit of \$650.00 plus interest of \$0.00	-650.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,700.00

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 \$2,700.00. 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 09, 2009.

Dispute Resolution Officer