

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on May 8, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenants were deemed to be served the hearing documents on May 13, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord's Agents and Male 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

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

Background and Evidence

The fixed term tenancy began on September 26, 2008 and was scheduled to expire on September 30, 2009. Rent was payable on the first of each month in the amount of \$1,595.00 and the Tenants paid a security deposit of \$797.50 on September 13, 2008.

The Landlord completed the move-in and move-out inspection reports in the presence of both Tenants as supported by the Landlord's documentary evidence.

The Landlord testified that the Tenants gave notice to end the fixed term tenancy prior to the expiry date and the Tenants vacated the rental unit on April 30, 2009.

The Landlord advised that despite their efforts in advertising to re-rent the unit they were not able to secure a new lease until August 1, 2009 and the Landlord had to lower the monthly rent to \$1450.00 per month. The Landlord faxed a copy of the new lease to the Residential Tenancy Branch and did not provide a copy to the Tenants in order to protect the privacy of the new tenants.

The Landlord argued that the Tenants left post dated cheques with the Landlord to cover the cost of rent for the remainder of the lease but that when the Landlord tried to deposit the May 2009 rent payment it was returned NSF, as the Tenants' bank account was frozen. The Landlord is seeking a \$25.00 returned cheque fee as provided for in the lease addendum.

The Landlord withdrew her request for a \$40.00 bank charge fee as it was not provided for in the Tenants lease agreement.

The Landlord is requesting to amend her application to seek monetary compensation for loss of rent for May, June and July 2009 for a total amount of \$4,785.00 ($\$1,595.00 \times 3$) and loss of rent for August and September of \$290.00 ($\145.00×2) which represents the difference between the new rental amount and the Tenants' rent amount, for the remainder of the fixed term lease.

The Landlord is also seeking \$178.21 which is the amount paid by the Landlord to repair the rental unit walls. The Landlord argued that the rental unit was built in 2007, that they have never painted this unit since it was built, and that there was one other tenant prior to these Tenants. The Landlord conducted a move-in and move-out

inspection report and attached an addendum to the move-out report where the Tenant signed in agreement to pay for the cost to repair the paint chips.

The Landlord is seeking to recover the cost of the filing fee of \$50.00 from the Tenants for this application.

The Tenant testified that he has no issues with what the Landlord's Agents are claiming and he agreed that they moved out of the rental unit early, before the expiry of the lease agreement. The Tenant argued that he has suffered a severe financial loss, that he has been laid off from work and that he is currently going through a separation and health issues with his wife. The Tenant stated that he barely had enough funds to get his daughter back home and he has since lost his home and a rental property.

Analysis

Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure* allows the Dispute Resolution Officer to permit an amendment to the application to include other related matters that may be the subject of an Application for Dispute Resolution between the parties. Based on the aforementioned I hereby allow the Landlord to amend their application to include a claim for loss of rent for July 2009 and the balance of the loss of rent for August 2009 and September 2009. As both parties were present at the hearing and the Tenant did not dispute the Landlord's claims, I find that by allowing the amendment to the application it does not result in a breach of the principles of natural justice and does not prejudice the other party.

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 Landlord 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 doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenants, 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.

Section 45(2) states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice and (b) is **not earlier than the date specified in the tenancy agreement as the end of the tenancy**, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Based on the aforementioned I find that the Tenants have breached Section 45(2) of the *Residential Tenancy Act* by ending the tenancy on April 30, 2009 instead of September 30, 2009 as noted in the lease agreement as the expiry of the fixed term tenancy.

Based on the testimony and evidence before me I find that the Landlord has proven the test for loss, as listed above, for loss of rent in full for May, June, and July 2009, and for partial rent for August and September 2009.

I find that the Landlord is entitled to the \$25.00 non-refundable returned cheque fee as provided for under Section 7 of the *Residential Tenancy Regulation*.

Given the documentary evidence whereby the Tenant has signed in agreement to repair the damaged walls and the receipt proving the cost of the repair, I find that the Landlord has proven the test for damages as listed above, and I approve their claim of \$178.21.

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 Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Loss of full rent for May, June and July 2009 (3 x \$1,595.00)	\$4,785.00
Loss of partial rent for August and September (2 x 145.00)	290.00
Returned Cheque Fee	25.00
Cost to repair walls	178.21
Filing fee	50.00
Sub total (Monetary Order in favor of the Landlord)	\$5,328.21
Less Security Deposit of \$797.50 plus interest of \$3.60	-801.10
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$4,527.11

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 \$4,527.11. The order must be served on the respondent and is enforceable through the Provincial Court and enforced 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: July 28, 2009.

Dispute Resolution Officer