



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNR, FF, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for unpaid rent, a Monetary Order for damage to the rental unit and for loss or damage under the Act, regulations or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

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 29, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on May 02, 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. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

This is a request for a monetary order for \$17,108.00, for unpaid rent and damages and a request for an order for the respondent to bear the cost of the filing fee paid for this application.

Background and Evidence

This tenancy started on August 01, 2006 and ended on April 30, 2009. This was a month to month tenancy and rent was \$2,600.00 per month due on the 1st of each month.

The landlord testifies that the tenant has been repeatedly late paying her rent over the term of the tenancy. The landlord has provided in evidence documentation of the rent paid and rent



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

owed. To date the tenant owes \$15,808.00 in unpaid rent. These arrears have accumulated over 2008 and 2009. At the end of December 2008 the tenant owed \$8,208.00 for non-payment of rent throughout 2008. Since that time the tenant has made a payment of \$1,500.00 on January 16, 2009 and has not paid any rent for February, March or April, 2009. The total amount owed by the tenant is **\$14,508.00**. The tenant did not pay her security deposit of \$1,300.00 at the outset of the tenancy and the landlord has requested that this is included in the arrears. A landlord must collect a security deposit with 30 days of the tenancy starting. If this is not collected she may end the tenancy by serving the tenant with a Notice. The landlord is unable to now claim this as unpaid rent.

The landlord also claims for the cost of postage for the Notice of the hearing and the additional evidence to the tenant at a cost of \$29.95. As this is a cost of the Dispute Resolution process I do not have the authority to award these costs to the landlord. The landlord is also claiming her \$100.00 filing fee.

The landlord testifies that the tenant has moved from the rental property and has not provided the landlord with a forwarding address. The tenant has left a considerable amount of damage and the suite needs to be cleaned. The landlord is concerned about the rental property and states it is not fit for habitation.

Analysis

Based on the testimony and evidence presented today and due to a lack of any evidence from the tenant despite opportunity to attend the hearing, I find that the landlord has established her monetary claim for rent arrears of **\$14,508.00** pursuant to s. 67 of the Act.

As the landlord has been partially successful with her claim I find she is entitled to recover the **\$100.00** filing fee for this application.

In Order to consider a monetary claim for damage or loss the claimant must meet the following criteria;

- Proof that the damage or loss exists

Residential Tenancy Branch
Ministry of Housing and Social Development

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet any of the components of the above test. The landlord has not submitted any evidence to support her claim for damages and I dismiss this section of her application without leave to reapply.

Conclusion

I HEREBY FIND in favor of part of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$14,608.00**. The order must be served on the respondent 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: July 30, 2009.

Dispute Resolution Officer