

DECISION

Dispute Codes MNSD MNR O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for other utilities and expenses incurred, and to recover the cost of the filing 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*, served to the Tenant personally by the Property Manager in the presence of a witness on May 29, 2009 between 8:30 a.m. and 9:00 a.m.

The Property Manager appeared, was provided the opportunity to present their 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 sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord is claiming \$2,200.00 for February unpaid rent, \$437.77 for a water bill, \$74.36 for locksmith fees, \$210.00 for house cleaning, \$220.00 for carpet cleaning, and the \$50.00 filing fee.

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 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.

The Landlord did not provide documentary evidence in support of their claim. Based on the aforementioned I find that the Landlord has failed to prove the test for damages as listed above, and I hereby dismiss the Landlord's claim without leave to reapply.

As the Landlord was not successful with their claim, I hereby dismiss their request to recover the cost of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, with leave to reapply.

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: August 28, 2009.

Dispute Resolution Officer