

DECISION

Dispute Codes OPB O MNSD MNR MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for breach of an agreement and to obtain a Monetary Order for damage to the unit, for money owed or compensation for damage or loss under the Act, for unpaid rent or utilities, to keep all or part of the security deposit, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was completed via regular mail on approximately June 5, 2009. The Tenant appeared and confirmed receipt of the hearing package.

Both the Landlord and 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 an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began September 9, 2008 and ended when the Tenant vacated the rental unit on May 31, 2009 with rent payable on the first of each month in the amount of \$1,000.00. The Tenant paid a security deposit of \$500.00 on September 8, 2008.

The Landlord testified that she did not conduct a move-in or a move-out inspection report and argued that she was not able to reach the Tenant by telephone after May 31, 2009. The Landlord advised that she found the Tenant's notice to end tenancy, dated May 11, 2009, posted to the Landlord's door on May 31, 2009 which stated that the Tenant would be vacating the rental unit on June 11, 2009 and included the Tenant's forwarding address.

The Landlord argued that it wasn't until approximately June 5, 2009 when the Landlord found out from the upstairs tenant that the Tenant had vacated the rental unit. The Landlord found the Tenant's keys inside the vacant unit and also found out the Tenant did not clean the rental unit.

The Tenant testified that she vacated the rental unit on May 31, 2009 and she did not provide the Landlord with the written notice to end tenancy until May 31, 2009. The Tenant stated that she first informed the Landlord of her intention to end the tenancy via telephone on May 11, 2009. The Tenant argued that during her May 11th telephone conversation the Landlord informed the Tenant that she is required to provide the Landlord with thirty days written notice and that the Landlord agreed to stop by the rental unit to pick up the written notice however the Landlord did not show up.

The Landlord withdrew her request for an Order of Possession as she has regained possession of the unit.

The Landlord is claiming \$1,000.00 for loss of June 2009 rent as she was not able to re-rent the unit until July 1, 2009. The Landlord is also claiming for \$325.00 which includes \$165.00 for cleaning the rental unit; \$5.00 for NSF cheque fee which the Tenant has since paid for; and \$155.00 for the cost of replacing and repairing parts inside the fridge, a damaged towel rack, two ceiling tiles, and the cable cord pulled from the wall.

Analysis

Service of the hearing documents by the Landlord to the Tenant was not done in accordance with section 89 of the *Act*; however the Tenant appeared at the hearing acknowledging receipt of the hearing documents and evidence which I find supports that service was effected.

The Landlord has testified that she did not complete a move-in or a move-out inspection report in contravention of sections 23 and 35 of the *Act*. I note that sections 24 and 36 of the *Act* stipulate that if the Landlord fails to complete the move-in and move-out inspection report then the Landlord's right to claim against the security and pet deposits is extinguished; however this does not prevent the Landlord from claiming damage or loss under other sections of the *Act* and does not prevent the Dispute Resolution Officer from applying claims awarded to the Landlord against the security deposit pursuant to section 72 of the *Act*.

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 doing whatever is reasonable to minimize the damage or loss

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.

The Tenant vacated the rental unit on May 31, 2009, the same date she provided the Landlord written notice to end her tenancy, in contravention of section 45 of the *Act* which states that a Tenant can end a month to month tenancy by providing one months written notice to the Landlord one month prior to the end of the tenancy on the day before the rent is due. In this case the Tenant provided the Landlord with the written notice on May 31, 2009 which would not be effective until June 30, 2009. If the Tenant wanted to end the tenancy on May 31, 2009 she would have had to provide the Landlord with written notice no later than April 30, 2009.

I do not accept the Tenant's argument that the Tenant's violation was somehow excused due to the Landlord's alleged failure to comply with the *Act* or agreement. Even if the Landlord was found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a Tenant.

Based on the above I find that the Landlord has proven the test for loss as listed above and I hereby approve her claim for \$1,000.00 of loss of rent.

The Landlord provided a cleaning receipt in the amount of \$165.00 which shows that the rental unit was cleaned by a professional cleaner. I note that the invoice is dated August 18, 2009 yet the Landlord testified that the rental unit was cleaned on June 15, 2009. In the absence of a move-in and move-out inspection report there is no evidence

before me to prove the condition of the rental unit at the time the Tenant took possession of the rental unit. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss and I dismiss her claim for \$165.00 for cleaning.

The balance of the Landlord's claim is for repair or replacement of parts for the fridge, two ceiling tiles, and to repair a towel rack in the bathroom. The Landlord did not provide receipts which show the actual cost of these repairs nor is there evidence to support the condition of these items before and after the tenancy. Based on the aforementioned I find that the Landlord has failed to prove the test for damage and loss as listed above and I hereby dismiss the remainder of the Landlord's claim of \$155.00.

As the Landlord has been partially successful in her claim I find that she is entitled to recover the \$50.00 cost of the filing fee from the Tenant.

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:

Loss of Rent for June 2009	\$1,000.00
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	\$1,050.00
Less Security Deposit of \$500.00 plus interest of \$2.36	-502.36
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$547.64

In regards to the Tenant's claims and evidence relating to problems with the breaker box at the rental unit, I am not able to neither hear nor consider the Tenant's claim during these proceedings as this hearing was convened solely to deal with the Landlord's application. That being said, I must point out that the Tenant is at liberty to make her claims in a separate application.

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 \$547.64. 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: September 17, 2009.

Dispute Resolution Officer