

DECISION

Preliminary Issues

The Tenants appeared and requested to change their application for dispute resolution to withdraw their request to have the Landlord comply with the Act, withdraw their request to obtain an Order of Possession, and to withdraw their request for an Order to allow the Tenant's access to the rental unit.

The Female Tenant testified that given what has occurred these past few weeks the Tenants have decided not to proceed with the tenancy with this Landlord and are now seeking a Monetary Order for compensation or loss under the Act in the amount equivalent to three months rent of \$2,550.00 (\$850.00 x 3) for aggravated damages.

The floor was turned over to the Landlord who made no comment about the Tenants' request to amend their application. I explained to the Landlord what the Tenants had requested to amended on their application and the Landlord replied, "I understand".

The Tenants have requested to amend their application for dispute resolution in the presence of the Landlord. The Landlord was given the opportunity to comment on the Tenants' request and after I explained the Tenants' requests to the Landlord there were no objections raised by the Landlord. As the Landlord was present at the hearing and made no objections to the Tenants' request to amend their application, it would not prejudice either party if the Tenants request was considered. Based on the aforementioned, I hereby approve the Tenants requests to amend their application.

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on November 5, 2009. Mail receipt numbers were provided in the Tenants' verbal testimony. The Landlord

was deemed to be served the hearing documents on November 10, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord and both Tenants appeared, acknowledged receipt of evidence submitted by the Tenants, 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

Are the Tenants entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Female Tenant (the Tenant) testified that she replied to a newspaper advertisement regarding the rental of a mobile home located just outside of the city on an acreage. The Tenant stated that she made arrangements to meet the Landlord at the rental unit on approximately September 20, 2009, where they conducted a walk through and discussed the terms of the tenancy. The Tenant argued that after she viewed the rental unit she told the Landlord that they would like to rent the unit and they discussed how rent is \$850.00 per month and a security deposit of \$300.00 would be required.

The Tenant testified that during the September 20, 2009 meeting they finalized the tenancy particulars and the Tenant asked the Landlord if she needed references. The Tenant stated that they made arrangements for the Landlord to stop by the Tenants' current residence to pick up the security deposit. The Tenant referred to her documentary evidence in support of her testimony that the Landlord picked up the security deposit of \$300.00 on September 28, 2009 and wrote the Tenant a receipt.

The Landlord confirmed that she met with the Tenant on approximately September 20, 2009, at the rental unit. The Landlord testified that during this first meeting the Landlord "agreed to rent" to the Tenant for \$850.00 per month with a \$300.00 security deposit. The Landlord argued that she did not remember the Tenant asking about references during this first meeting.

The Tenant stated that she had agreed to provide the Landlord with twelve post dated cheques for the monthly rent and that during a telephone conversation on October 15, 2009 the Tenant provided the Landlord with references and the Landlord agreed to

come by on October 16, 2009 to pick up the post dated cheques. The Tenant stated that the Landlord called the Tenant on October 16, 2009 to advise the Tenant that the Landlord would not be renting to the Tenant.

The Landlord confirmed that on approximately September 20, 2009, she agreed to rent to the Tenant effective November 1, 2009, that she picked up the security deposit on September 28, 2009, and on October 16, 2009 she told the Tenant that after checking the references, the Landlord felt she could not rent to the Tenants.

The Tenant testified that they are still in their previous rental unit as they have not been able to find another place to rent.

Analysis

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Based on the aforementioned and the testimony before me I find that the parties entered into a one year fixed term tenancy agreement effective August 31, 2009.

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant 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 Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant 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 Tenants’ right to claim damages from the Landlords, 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.

In this case I have affirmed testimony by both the Landlord and the Tenants that they entered into a verbal tenancy agreement, commencing November 1, 2009 for the monthly rent of \$850.00, and a security deposit of \$300.00. The Landlord received the \$300.00 deposit on September 28, 2009, which was later returned to the Tenants.

The Landlord later denied the Tenant access to the rental unit, stating that they had changed their mind; the Landlord was cancelling the tenancy agreement, and returned the Tenants' \$300.00 deposit. I find that the Landlord's actions were in contravention of the *Act*. While there are provisions under sections 46, 47, 48, and 49 whereby a landlord may cancel a tenancy for specific reasons and with specific notice and compensation, there is no provision in the *Act* which allows a landlord to simply cancel a tenancy agreement without providing the Tenant with proper notice and without cause.

The Tenants are seeking damages in the amount of \$2,550.00; an amount equal to three month's rent, for the stress they suffered in trying to find another place to live. I find that the Landlord was negligent in entering into a verbal tenancy agreement before checking the Tenants' references, that this negligent action caused the Landlord to commit the deliberate and wilful act of cancelling the tenancy agreement in contravention of the *Act*. I find that the Tenants' claim for damages has merit, however I find the amount claimed to be excessive given the *Act* provides the Landlord the ability to cancel a tenancy with as little as one month's notice. I hereby award the Tenant \$850.00, an amount equal to one month's rent, in aggravated damages.

As the Tenants have been successful with their application I find that they are entitled to recover the \$50.00 filing fee from the Landlord making their total award \$900.00 (\$850.00 + \$50.00).

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$900.00. The order must be served on the respondent Landlord 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: November 26, 2009.

Dispute Resolution Officer