

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant 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 Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlords, was served personally by an Agent of the Tenant to the Landlords on September 10, 2009. The Landlords confirmed receipt of the hearing package.

Both the Landlords and the Tenant appeared, 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 Tenant entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that he entered into a one year fixed term, written tenancy agreement with the Landlords and that he was to take possession of the rental unit on August 31, 2009. The Tenant argued that on August 16, 2009 the Tenant provided the Landlords with \$850.00 cash which represented a security deposit of \$425.00 and a pet deposit of \$425.00, for which the Landlord gave the Tenant a receipt.

The Tenant stated that he was scheduled to take occupancy on August 31, 2009 and when he called the Landlords on August 30, 2009 to set up a time to get the keys, the Landlord returned his call and told the Tenant that the Landlords had heard things about the Tenant and they wanted to hold off making their decision for a while. The Tenant stated that he told the Landlord that he was a single father and requested that the Landlord advise the Tenant of his final decision as soon as possible.

The Landlords both provided testimony where they both confirmed they entered into a written tenancy agreement with the Tenant, that they did not provide the Tenant with a copy of the signed written agreement, and that they took \$850.00 in deposits from the Tenant on August 16, 2009, which they subsequently returned to the Tenant.

The female Landlord argued that they had entered into the tenancy agreement before hearing back from all of the Tenant's references and that she claims she told the Tenant that his tenancy agreement was "conditional". The female Landlord later testified that she went through the references first, then signed the lease agreement with the Tenant, then took the Tenant's deposits, and then awaited the responses from the references.

The female Landlord testified that she had misplaced her copy of the tenancy agreement and when I asked the Landlord for the exact date on when the tenancy agreement was signed, the female Landlord became upset, was raising her voice and yelling at me. I explained to the female Landlord that her behaviour towards me was unacceptable at which time she told me to speak with her spouse and handed the telephone to the Male Landlord.

The Male Landlord stated that he was not sure on exact dates and he could not provide first hand testimony in relation to when the references were contacted as it was his spouse who looked after those issues.

The Tenant testified that he has requested a monetary order in the amount of \$1,400.00 which is comprised of \$850.00 compensation which is equal to one month's rent as the Tenant was forced to find a rental space elsewhere in a short period of time, \$300.00 for three weeks rent of a 5th wheel that the Tenant was required to rent while he searched for new accommodations, \$150.00 for the cost the Tenant incurred for his brother to care for the Tenant's dog for three weeks, and \$100.00 for miscellaneous expenses such as time and gas money to drive around to find another rental place.

The female Landlord came back into the hearing and when she heard what the Tenant was seeking the female Landlord became upset again and continued to raise her voice at me and yelling stating something along the line about how could I expect them to rent their house to this guy after the stories they had heard about them.

I informed the female Landlord for the second time that her behaviour was inappropriate for this proceeding and as she continued to yell I ended the hearing, in accordance with the *Residential Tenancy Branch Rules of Procedure # 8.7*.

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 Tenant's 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 Landlords and the Tenant that they entered into a written tenancy agreement, for a one year fixed term, commencing August 31, 2009 for the monthly rent of \$850.00, and a security deposit of \$425.00 and a pet deposit of \$425.00. The Landlord received the \$850.00 in deposits in cash on August 16, 2009.

The Landlords later denied the Tenant access to the rental unit, stating that they had changed their mind; the Landlords were cancelling the tenancy agreement, and returned the Tenant's \$850.00 of 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 as Landlord to simply cancel a tenancy agreement without providing the Tenant with proper notice and without cause. The Tenant is seeking damages in the amount of \$850.00; an amount equal to one month's rent, for the stress he suffered in trying to find another place for him and

his two sons to live. I find that it the Landlords were negligent in entering into a written tenancy agreement before hearing back from the Tenant's references, that this negligent action caused the Landlords' deliberate and wilful act of cancelling the tenancy agreement in contravention of the Act. I find that the Tenant's claim of \$850.00 has merit and I hereby award the Tenant \$850.00 in aggravated damages.

With respect to the remainder of the Tenant's claim of \$550.00 (\$300.00 in rent for the 5th wheel, \$150.00 for car of the Tenant's dog, and \$100.00 for miscellaneous expenses and gas) there is no documentary evidence before me to verify that the Tenant occurred all of these expenses and what the actual amount was to pay for these expenses. Based on the aforementioned I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss the Tenant's claim of \$550.00, without leave to reapply.

As the Tenant was partially successful with his application I find that he is entitled to recover the \$50.00 filing fee from the Landlords making his total award \$900.00 (\$850.00 + \$50.00).

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$900.00. The order must be served on the respondent Landlords and is enforceable through the Provincial Court as an order of that Court.

Dated: November 25, 2009.

Dispute Resolution Officer