

DECISION

Dispute Codes MNR MNSD MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, for unpaid rent, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenants.

The Landlord testified that service of the hearing documents was done by sending one registered mail envelope with both Tenants' names on the envelope, September 17, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Landlord confirmed that the male Tenant signed for the registered mail envelope. The male Tenant is deemed to be served the hearing documents on September 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Section 88(1) of the Act determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the Act and section 3.1 of the Residential Tenancy Branch Rules of Procedure. In this case only one of the two tenants has been served with the Notice of Dispute Resolution. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act and section 3.1 of the Residential Tenancy Branch Rules of Procedure the monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlord appeared, gave affirmed testimony, 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.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on May 1, 2009 and was set to expire on April 30, 2010 with the monthly rent of \$1,050.00. A security deposit of \$425.00 was paid on February 26, 2009 which was transferred from a previous tenancy agreement and an additional \$100.00 was paid towards the security deposit on August 14, 2009. The Tenancy ended on July 31, 2009 after the Tenants were issued a 10 Day Notice to End the Tenancy for unpaid rent, issued on July 2, 2009.

The Landlord testified that the Tenants made a partial payment towards rent and they tried to work out payment arrangements with the Tenants however they were not successful and the Tenants informed the Landlord later in the month that they would move out on July 31, 2009. The Landlord argued that they attended the rental unit on July 31, 2009 at 11:30 to conduct the move-out inspection and the Tenants were not ready so the Landlord agreed to return to the rental unit at 1:00 p.m. The Landlord stated that when they returned at 1:00 pm on July 31, 2009 the Tenants were gone and left the rental unit a mess.

The Landlord is seeking \$414.80 in unpaid rent, \$1,050.00 for loss of rent for August 2009, July and August late fees at \$25.00 per month, \$120.00 for six hours of cleaning as supported by the cleaner's time sheet provided in evidence, and a \$25.00 administrative fee for having to apply to keep the security deposit.

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 doing whatever is reasonable to minimize the damage or loss

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.

Unpaid rent of \$414.80 for July 2009 – Based on the evidence and testimony before me I find that the Tenants have contravened section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above and I hereby approve their claim for \$414.80 of unpaid rent.

Loss of August 2009 Rent – The Tenants moved out of the rental unit on July 31, 2009 after their failure to pay all of July 2009 rent and with only a couple of weeks notice to the Landlord of their move out date. In this case the Landlord attempted to create a workable payment arrangement with the Tenants and for whatever reason it was not possible resulting in the Tenants ending the fixed term tenancy prior to the expiry date in contravention of section 45(2) of the *Act*. Based on the above I find that the Landlord has proven the test for damage and loss as listed above and I hereby approve their claim for loss of rent of \$1,050.00.

July and August 2009 Late Fees \$50.00 – The Landlord is seeking a \$25.00 late payment fee for July 2009 and August 2009 as noted in section 45 of the tenancy agreement and provided for under section 7(d) of the Residential Tenancy Regulation. I find that while July 2009 rent was late, the tenancy agreement ended on July 31, 2009, which means there was no August 1, 2009 rent payable and cannot be considered late. Based on the aforementioned I hereby approve the Landlord's claim of late fees in the amount of \$25.00.

Administrative Fee \$25.00 – The Landlord is seeking a non-refundable administrative fee of \$25.00 for having to make deductions against the security deposit. The Landlord referred to section 45 of their tenancy agreement in support of this claim. I note that there is no provision in the *Act* or in the Regulations that allow a Landlord to collect a non-refundable administration fee for having to make a deduction against a security deposit and I find this term of the tenancy agreement to be unconscionable; in fact it is an attempt to contract out of the *Act* in contravention of section 5 of the *Act* and I hereby dismiss the Landlords claim of \$25.00.

Cleaning Costs – The Landlord's testimony and evidence supports that the Landlord's employee was required to clean the rental unit for a total of six hours. The Landlord has

claimed six hours at \$20.00 per hour however the Landlord has failed to provide evidence of the actual amount the employee was paid to complete this work as is required under number three in the test for damage and loss as listed above. That being said there is evidence to support that the cleaning was required and that it took six hours of work. Based on the aforementioned I hereby approve the Landlord's claim in the amount of \$90.00 (6 hours x \$15.00 per hour)

Filing Fee – The Landlord has been primarily successful with their claim and I find that they are entitled to recover the \$50.00 filing fee from the Tenants.

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 Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for July 2009	\$414.80
Loss of Rent for August 2009	1,050.00
July 2009 Late payment fee	25.00
Cleaning costs	90.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$1,629.80
Less Security Deposit of \$525.00 plus interest of \$0.00 on \$425.00 from February 26, 2009 to May 13, 2009 \$0.00 on \$525.00 from May 14, 2009 to December 2, 2009	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,104.80

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 \$1,104.80 against the male Tenant. 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: December 02, 2009.

Dispute Resolution Officer