

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

A previous hearing was held in this dispute on November 12, 2009. A decision and a monetary order in favour of the landlord were issued on that same date.

Subsequently, on November 27, 2009 the tenant filed an application to review the dispute resolution officer's decision and order. The tenant's application was filed pursuant to section 79(2)(a) of the Act which provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control.

By review decision dated December 7, 2009, the tenant's application was granted. Accordingly, the decision and order dated November 12, 2009 were suspended pending the outcome of the review hearing.

This review hearing, therefore, deals anew with the landlord's application for a monetary order as compensation for unpaid rent or utilities, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the original fixed term of tenancy was from March 1, 2007 to February 29, 2008. Thereafter, tenancy continued on a month-to-month basis. Most recently, rent in the amount of \$1,451.00 was payable in

advance on the first day of each month. A security deposit of \$700.00 was collected on or February 7, 2007.

The parties agree there are two separate amounts still owed by the tenant for the cost of utilities and carpet cleaning. However, the parties present varying perspectives around whether the tenant provided the landlord with written notice to end tenancy by way of regular mail and, if so, why the landlord is unable to confirm its receipt; these different perspectives affect any entitlement the landlord may have to a monetary order as compensation for loss of rental income.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the tenant will pay the landlord \$96.96 for utilities;
- that the tenant will pay the landlord \$166.69 for carpet cleaning;
- that the tenant will pay the landlord one half month's rent in the amount of \$725.50 ($\$1,451.00 \div 2$);

Sub-total: \$989.15

- that the tenant's security deposit of \$700.00 will be offset against the above sub-total, leaving the amount owed by the tenant as \$289.15 ($\$989.15 - \700.00)
- that further to the above, the tenant will pay the landlord half the filing fee in the amount of \$25.00 ($\$50.00 \div 2$), leaving the grand total owed by the tenant to the landlord as **\$314.15** ($\$289.15 + \25.00).

- finally, that by no later than **midnight, Wednesday, January 20, 2010**, the tenant will either i) personally deliver a **cheque** for \$314.15 to the landlord's agent's office, or ii) put the cheque into the mail.

Conclusion

Pursuant to section 82 of the Act, the decision and order dated November 12, 2009 are hereby set aside.

Pursuant to the above agreement, I hereby order that the landlord may retain the tenant's full security deposit in the amount of \$700.00.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$314.15**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 15, 2010

Dispute Resolution Officer