

DECISION

Dispute Codes MND MNR MNSD MNDC FF SS

Preliminary Issues

The Landlord requested to amend their application to withdraw their request for monetary compensation for damage to the unit, money owed or compensation for damage or loss under the Act, and their request for to serve documents in a different way than what is required under the Act.

The Landlord wishes to proceed with their application for a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

Introduction

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

Service of the hearing documents, by Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant on October 16, 2009, at her place of employment. The Tenant appeared and confirmed receipt of the hearing documents.

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, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement for a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony confirmed that the month to month tenancy began on June 20, 2008 with the monthly rent of \$1,300.00 payable on the first of each month. The

Tenant paid a security deposit of \$650.00 on June 20, 2008. There were no move-in or move-out inspection reports completed.

The Landlord argued that they received an e-mail from a neighbour on September 6, 2009 advising the Landlord that the rental property had been vacated and the house left unsecure with open windows.

The Tenant testified and confirmed that she vacated the rental unit on September 2, 2009, leaving the keys inside the rental unit.

The Tenant argued that on August 2, 2009 the Tenant provided the previous Landlord with verbal notice that she would be ending the tenancy on September 1, 2009. The Tenant testified and confirmed that she did not provide the Landlord with written notification to end her tenancy.

The Landlord argued that they were not able to re-rent the unit until November 1, 2009 and they are seeking a claim for the September 2009 unpaid rent.

Analysis

I find that in order to justify payment of damages or losses under section 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1,300.00 for September 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

Section 45 of the *Act* provides that a tenant may end a periodic tenancy by providing the landlord notice that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month rent is due. In this case if the Tenant wished to end the tenancy on August 31, 2009 she would have had to provide the Landlord with notice no later than July 31, 2009.

Based on the above, I find that the Landlord has proven their claim for unpaid rent for September 2009.

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and are entitled to recover the 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 plus interest, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for September 2009	\$1,300.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$1,350.00
Less Security Deposit of \$650.00 plus interest of \$5.19 from June 20, 2008 to January 20, 2010	-655.19
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$694.81

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 \$694.81. 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: January 20, 2010.

Dispute Resolution Officer