

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for loss of rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 9, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on October 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, was provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant did not appear despite being served with notice of today's hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order for loss of rent under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on December 1, 2008 and was set to expire on November 30, 2009. The tenancy ended on February 28, 2009 after the Tenant served the Landlord with one month's written notice to end the tenancy. Rent was payable on the first of each month in the amount of \$1,695.00. The Tenant paid a security deposit

of \$847.50 on November 21, 2008 which was refunded in full with interest to the Tenant on March 9, 2009.

The Landlord referred to her documentary evidence in support of her testimony that they were not able to re-rent the unit until April 1, 2009 causing them a loss of rent for the month of March 2009.

The Landlord is seeking a claim in the amount of \$1,695.00 less \$305.66 for the cost of repairs done by the Tenant for a total claim of \$1,389.34.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Based on the testimony and evidence before me I find that the Tenant ended a fixed term tenancy in contravention of section 45 of the Act which provides that a tenant may

end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby award the Landlord \$1,389.34 in accordance with section 67 of the Act.

As the Landlord has been successful with their claim, I hereby award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Loss of rent for March 2009	\$1,695.00
LESS cost of repairs owed to the Tenant	-305.66
Filing fee	50.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,439.34

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 \$1,439.34. 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: February 05, 2010.

Dispute Resolution Officer