

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order to keep the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to Tenant (1), was done in accordance with section 89 of the Act, sent via registered mail on October 22, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. Tenant (1) appeared and confirmed receipt of the hearing package.

Service of the hearing documents, by the Landlord to Tenant (2) and Tenant (3), was not done in accordance with section 89 of the Act, as the packages were sent via registered mail on October 22, 2009 to an address where these Tenants do not reside, in contravention of Section 89 of the Act.

The Landlord, Tenant(1) (Tenant), and the Tenant's Agent (Agent), 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.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order a) to keep the security deposit and b) for money owed or compensation for damage or loss under the Act, pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the Landlords met with Tenant (1), Tenant(3) and Tenant (1)'s Agent on August 28, 2009 and entered into a written fixed term tenancy agreement which commenced on August 28, 2009 and was set to expire on may 31, 2010. This meeting took place in a different city than where the rental unit is located and Tenant (1) and Tenant (3) willingly entered into and signed the tenancy agreement, prior to seeing the rental unit. Tenant (2) did not attend this meeting and did not sign the rental agreement. The Agent for Tenant (1) was at this meeting and signed a statement

taking full responsibility for payments in the event that Tenant (1) could not make his payments. A move-in inspection was not fully completed by the parties as the Landlords did not attend the rental unit with the Tenants.

Rent was payable on the first of each month in the amount of \$1,300.00 and a security deposit of \$650.00 was paid on August 26, 2009. The security deposit was deposited directly into the Landlord's bank account and post dated cheques issued for the monthly rent.

The Tenants contacted the Landlords on August 29, 2009, via e-mail and a telephone call, advising the Landlords that one of the bedrooms was too small for their bed and the rental unit was not clean so the Tenants were not going to move into the rental unit and wanted to cancel the tenancy agreement and requested that all of their post dated cheques be returned and the September 2009 cheque would have a stop payment placed on it.

The Landlord argued that the September 2009 rent payment did not clear the bank while the Agent argued that she did not put a stop payment on the cheque and in fact the Landlord returned the cheque to Tenant (1) in mid September.

A second meeting took place approximately mid September 2009, in the city where the rental unit is, at which time the Landlords returned the Tenants' post dated cheques and the Tenants returned the keys for the rental unit.

The Landlord testified that they were not able to re-rent the unit on their own, after advertising on two different websites, so in October 2009 the Landlords hired a property management company who were able to re-rent the unit as of January 15, 2010 for a lower rent amount of \$1,000.00.

When asked why the Tenants did not give the Landlords an opportunity to rectify the situation the Agent argued that she didn't feel the area was a safe neighbourhood to leave young students to live in.

The Landlord is claiming loss of rent of \$1,300.00 for September 2009 and \$1,000.00 loss of rent for October 2009 and November 2009 for a total claim of \$3,300.00.

Analysis

Section 88(1) and 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve

each respondent as set out under *Residential Tenancy Rules of Procedure* and if served via registered mail the package must be sent to the address for which the Tenant resides in accordance with Section 89 of the Act.

In this case only one of the three Tenants has been properly served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against the three listed Tenants must be amended to include only Tenant (1) 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, the monetary claim against Tenant (2) and Tenant (3) is dismissed, without leave to reapply.

The Agent for Tenant (1) appeared and confirmed that on August 28, 2009 she signed a statement which reads "I (name of agent) take full responsibility of rent payment, should (name of Tenant (1)) be unable to make payments. Based on the aforementioned I find that the Agent for Tenant (1) has accepted full responsibility for any debt incurred in relation to this tenancy agreement and therefore the Agent's name will be added to the Landlords monetary claim.

Tenant (1) and Tenant (3) rented the same property under the same tenancy agreement and are considered co-tenants. Tenant (2) is not considered a tenant as she did not sign the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent or any damages from all or any one of the tenants.

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

In this case the Co-Tenants entered into a fixed term tenancy agreement on August 28, 2009 and informed the Landlords on August 29, 2009 that they wished to cancel the fixed term tenancy agreement, 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 one month after the date the landlord receives the notice; and is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable. In this case the Tenants would only be able to cancel the tenancy agreement effective May 31, 2010 providing they gave notice to the Landlords no later than April 30, 2010.

I do not accept the Tenants' argument that they should be allowed to cancel the tenancy, the day after they signed the agreement, when they saw that the rental unit was not cleaned to their standards or that their bed did not fit into one of the bedrooms, and I note that the *Residential Tenancy Act* does not provide a right of rescission. .

After consideration of the evidence before me I find that the Landlords have proven the test for damage or loss, as listed above and I hereby approve the Landlords' claim for loss of rent of \$1,300.00 for September 2009, \$1,000.00 for October 2009 and \$1,000.00 for November 2009.

As the Landlords have been successful with their application I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlords are 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 Landlords are entitled to recover the filing fee from the Tenants as follows:

Loss of rent for September 2009	\$1,300.00
Loss of rent for October 2009 and November 2009 at \$1,000.00 each	2,000.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,350.00
Less Security Deposit of \$650.00 plus interest of \$0.00	- 650.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,700.00

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,700.00**. 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 16, 2010.

Dispute Resolution Officer