

## **DECISION**

Dispute Codes      MNR MNSD FF

### 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 for this application.

Service of the hearing documents was done in person by a professional server on November 30, 2009 at 9:20 a.m. in accordance with section 89 of the *Act*. An affidavit was provided in the Landlord's documentary evidence.

The Landlord appeared, 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) unpaid rent and b) to keep the security deposit under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord testified that she is the executor/executrix of the recently deceased landlord and confirmed that the style of cause on the application for dispute resolution should be amended to include the word executor and remove the "c/o" prior to the executor's name.

The verbal month to month tenancy began on October 1, 2009 and ended when the Tenant vacated the rental unit on approximately November 15, 2009. Rent was payable on the first of each month in the amount of \$300.00 and the Tenant paid a security deposit of \$180.00 on or before October 1, 2009.

The Landlord testified that when the Tenant failed to pay November 2009 rent a 10 Day Notice to End Tenancy was served, in person to the Tenant, on November 14, 2009 for \$300.00 of unpaid rent.

### Analysis

All of the testimony and documentary evidence was carefully considered.

The style of cause listed on the first page of this decision includes the word executor as confirmed by the Landlord and in accordance with the *Residential Tenancy Policy Guideline #23*.

The Landlord was requested to fax to the *Residential Tenancy Branch*, after the hearing, a copy of the 10 Day Notice to End Tenancy issued in November 2009 and a copy of the affidavit of service from the process server, in accordance with 11.5 of the *Residential Tenancy Branch Rules of Procedure* which provides that a Dispute Resolution Officer may accept evidence, after the hearing, if acceptance of the evidence would not prejudice the other party. In this case the Tenant was previously served with the dispute resolution documents, in person by the process server, and a copy of the 10 Day Notice to End Tenancy at the rental unit so there would not be a breach of the principles of natural justice.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant 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.

The Landlord is seeking a monetary order for unpaid rent of \$300.00 for November 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 standard term of the verbal tenancy agreement which stipulates that rent is due monthly on the first of each month.

**Filing Fee \$50.00.** I find that the landlord has succeeded with their application and I hereby award recovery of the filing fee.

**Claim to keep all or part of security deposit.** I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim of \$350.00 (\$300.00 rent plus \$50.00 filing fee) to be offset against the Tenant's security deposit of \$180.00 plus interest of \$0.00 (from October 1, 2009 to March 4, 2010) for a balance owing to the Landlord of **\$170.00** (\$350.00 - \$180.00).

Conclusion

I hereby grant a Monetary Order of **\$170.00** in favor of the Landlord. This Order must be served on the respondent Tenant and is enforceable through the Provincial Court of British Columbia.

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: March 04, 2010.

---

Dispute Resolution Officer