

## **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 or utilities, to keep the security and pet deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was done via registered mail addressed to the female Tenant and sent on December 1, 2009 to the forwarding address provided by the Tenants on November 16, 2009. Mail receipt numbers were provided in the Landlord's evidence along with a copy of a print out from the Canada Post website which shows that the Tenant refused to accept delivery of the package. The female Tenant is deemed to be served the hearing documents on December 6, 2009, the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

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

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order a) for unpaid rent or utilities, and b) to keep the security and pet deposit under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy agreement began on February 1, 2009 and ended effective November 30, 2009. Rent was payable on the first of each month in the amount of \$900.00 and a security deposit of \$450.00 was paid on January 17, 2009 and a pet deposit of \$450.00 was paid on February 10, 2009.

The Landlord testified that on November 4, 2009 the Tenants provided her with written notice to end tenancy effective November 30, 2009. The Landlord referred to her documentary evidence and the move out inspection form whereby the Tenant signed the move out inspection acknowledging \$220.00 is owed for utilities and one month's rent would be owed if the Landlord was not able to re-rent the unit by December 2009.

The Landlord argued that she has spent over \$700.00 to date in advertising to re-rent this unit and it remains vacant. The Landlord is seeking \$900.00 as loss of rent for the month of December 2009 because the Tenants did not provide the proper 1 month notice to end the tenancy, plus \$220.00 for hydro and water utilities as supported by the copies of the utility bills provided in evidence.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been properly served with the Notice of Direct Request Proceeding document, as only one envelope was mailed and addressed to the female Tenant. If service is conducted by registered mail the Landlord must send a registered mail package to each tenant. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the female Tenant 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 the Male Tenant is dismissed without leave to reapply.

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

The Landlord has claimed \$900.00 for loss of rent for December 2009 as the Tenants failed to provide the Landlord with proper notice to end the tenancy in accordance with section 45 of the Act which provides that a tenant may end a periodic 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 the day before the day in the month that rent is payable under the tenancy agreement. In this case if the Tenants wanted to end the tenancy as of November 30, 2009 the Landlord would have had to receive the notice no later than October 31, 2009. Based on the aforementioned I find that the Landlord has met the test for damage or loss, as listed above, and I hereby approve her claim in the amount of \$900.00.

With respect to the unpaid utilities, the evidence supports that the Tenants are required to pay 25% of the utilities and the Tenants signed the move-out inspection acknowledging that there was \$220.00 outstanding in unpaid utility bills. Based on the aforementioned I find that the Landlord has met the test for damage or loss and I hereby approve her claim in the amount of \$220.00 for unpaid utilities.

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

**Monetary Order** – I find that the landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits as follows:

Loss of December 2009 rent	\$900.00
Unpaid Utilities (Water and Hydro)	220.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$1,170.00</b>
Less Security Deposit of \$425.00 plus interest of \$0.00	-450.00
Less Pet Deposit of \$375.00 plus interest of \$0.00	-450.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$270.00</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim against the female Tenant. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$270.00**.

The order must be served on the respondent Tenant and is enforceable through the Provincial Court and enforced 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: March 05, 2010.

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Dispute Resolution Officer