



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an application by the landlord for a monetary order for money owed or compensation for loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim. Despite being served by registered mail, the tenant did not appear.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order for \$562.00. The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to compensation under section 67 of the *Act* for loss of rent and to retain the security deposit. This requires answers to the following:
 - Has the landlord submitted proof that the amounts claimed are validly owed by the tenant to this landlord by establishing on a balance of probabilities:
 - a) that the loss was caused by the tenant in violation of the Act
 - b) a verification of the actual amount of the loss
 - c) that the landlord fulfilled the obligation to do whatever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began on December 14, 2009 and ended on December 18, 2009. The tenant paid rent for the period from December 15, 2009 until January 14, 2010 in the amount of \$562.00 plus a security deposit of \$281.00. According to the landlord, the tenant suddenly informed the landlord that the tenancy was ending on December 18, 2009 and despite scheduling a move-out inspection, the tenant never showed up and only left the keys. The landlord testified that a letter received from the tenant dated January 4, 2010 provided a forwarding address and requested return of the deposit.

The landlord testified that it had attempted to mitigate by advertising but failed to re-rent the unit for January 15, 2010 and had incurred a loss of one month's rent as a result. The landlord was seeking \$562.00 and the cost of filing the application.

Analysis

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

I find that in order to justify payment of damages under section 67, 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. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists, and that this happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

2. Verification of the amount required to compensate for the loss or damage.
3. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance I find that the tenant violated the Act and agreement by terminating the tenancy before the expiry date of the fixed term and without giving even a full month's notice as the Act would require for a month-to-month tenancy.

I find that the tenant's violation resulted in losses and that the landlord met the obligation to minimize the losses by attempting to re-rent the unit. I find that the landlord's is entitled to be compensated for unpaid rent for the period from January 15, 2010 and February 15, 2010 for a total monetary claim in the amount of \$612.00 comprised of \$562.00 rent owed and the \$50.00 cost of this application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$612.00 and I order that the landlord retain the security deposit and interest of \$281.00, in partial satisfaction of the claim and issue a monetary order for \$331.00 in favour of the landlord. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

April 6, 2010

Date of Decision

Dispute Resolution Officer