

DECISION

Dispute Codes

MNSD MNDC FF

Introduction

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

Service of the hearing documents, by the Landlord to the Tenants, was sent via registered mail on December 8, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing packages.

The Landlord and Tenant 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 under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included the original fixed term tenancy began on August 1, 2008 and was set to end on July 31, 2009. The parties entered into a second agreement to extend the fixed term tenancy to July 31, 2010 at which time the Tenants were to vacate the rental unit. Rent was payable on the first of each month in the amount of \$950.00 and a security deposit of \$475.00 was paid on July 14, 2008.

The Landlord testified the Tenants provided him with 1 month's written notice to end the tenancy on November 30, 2009, eight months prior to the end of the fixed term and that the Tenants paid him the \$500.00 liquidated damage fee in accordance with #5 of their tenancy agreement. The Landlord argued that because of the slow market he advertised the rental unit for \$900.00 per month, to re-rent the unit as quickly as possible and to mitigate his losses. The Landlord stated that he was able to re-rent the unit effective December 1, 2009 for a loss of \$50.00 per month. The Landlord confirmed that he entered into a new fixed term tenancy which expires on August 31, 2010. The Landlord is seeking \$400.00 to cover his loss of \$50.00 for the eight remaining months of the fixed term.

The Tenant testified and confirmed he was attending the hearing on behalf of both Tenants. The Tenant argued that they paid the \$500.00 liquidated damages, up front, with their notice to end the tenancy, and that they feel the liquidated damages was the amount they had agreed to pay for the estimated loss if they had to break the lease and should not have to pay the Landlord additional money. The Tenant confirmed the Landlord withheld \$400.00 from their security deposit and the Landlord refunded the remaining amount plus interest as per the move-out inspection report, on November 30, 2009.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 Tenants ended the tenancy agreement in contravention of section 45(2)(b) of the Act which provides that a tenant may end a fixed term tenancy on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenancy agreement item 5 states “liquidated damages cover the landlord’s costs of re-renting the rental unit and must be paid **in addition to** *(emphasis added by myself)* any other amount owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property”. Based on the aforementioned I find costs to re-rent the unit would include items such as advertising costs, costs to show the unit to prospective renters, issuance of keys, other miscellaneous items, and that the Tenants would be responsible to pay additional amounts for unpaid rent, loss of rent, or damage to the unit.

I accept the Landlord’s argument that he mitigated his losses by advertising the unit at a lower monthly rent, in this depressed rental market, in order to limit the overall loss by renting the unit sooner. The evidence supports the Landlord has re-rented the unit at a loss of \$50.00 per month for the remaining 8 months of the tenancy agreement.

Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his claim in the amount of \$400.00.

Monetary Order – I find that the Landlord is 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 withheld by the Landlord , and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Loss of rent December 2009 to July 2010 (8 x \$50.00)	\$400.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$450.00
Less Security Deposit of \$400.00 withheld by the Landlord	-400.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$50.00

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 **\$50.00**. The order must be served on the respondent Tenants 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: April 26, 2010.

Dispute Resolution Officer