

DECISION

Dispute Codes MNR, SS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent and utilities and a Monetary Order to recover the filing fee. At the outset of the hearing the landlord withdrew his application for an Order for Substitute Service as this is no longer required.

The landlord served the tenant by registered mail on February 20, 2010 with a copy of the Application and Notice of Hearing. The landlord served the tenant again by registered mail to her new address once this had been received, to ensure the tenant received notice of this hearing. I find that the tenant was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord and the agent for the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?

Background and Evidence

This tenancy started on September 01, 2009, this was a fixed term tenancy for one year and was due to expire on the last day of August, 2010. Rent for this unit was \$1,300.00 per month and was due on the first of each month. The tenant paid a security deposit of \$650.00 on August 31, 2009. The tenant vacated the rental unit on February 28, 2010.

The landlord testifies that the tenancy agreement states that the term of the tenancy is for one year. However, there is a separate clause in the agreement which states that the period of tenancy is for a minimum of six months and after this term it can be terminated by either the landlord or tenant by giving two months notice.

The landlord testifies that the tenant gave two months notice to end the tenancy on December 23, 2009 with an effective date to end tenancy on February 28, 2010. The landlord has provided a copy of the tenancy agreement, the notice from the tenant and the subsequent e-mail correspondence between the parties concerning the tenants early notice and outlining that the tenancy cannot legally end at that time and the tenant would continue to be responsible for the rent until such a time as either the fixed term tenancy ends or the unit is re-rented.

The landlord testifies that since filing his application he was able to re-rent the unit from April 01, 2010. Therefore, the landlord has amended his application from \$7,800.00 to \$1,300.00 to recover rent for the month of March, 2010 only.

The landlord states the tenant owes utilities for water, sewage and garbage services to the sum of \$358.55. The landlord has sent a copy of this bill to the tenant and the tenant does not dispute this amount and has agreed in writing to the landlord that he may deduct this amount from her security deposit.

The landlord also seeks to recover the \$100.00 filing fee from the tenant which was paid for this application.

The tenants' agent disputes the landlords claim that the tenant owes rent for March, 2010. The tenants' agent testifies that the term in the tenancy agreement states that the minimum term of the tenancy is six months and that the tenant may give the landlord two months notice to end the tenancy. The tenants' agent states that this is what the tenant did when she gave notice to end the tenancy on December 23, 2009 which effectively ended the tenancy after the minimum term of six months.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. It is my decision that the tenancy agreement clearly states that the tenancy is for one year. It also clearly states that the period of tenancy is for a **minimum of six months** and **after this term** it can be terminated by either the landlord or tenant by giving two months notice. Consequently I find the tenant gave her two months notice before the minimum six months term had ended and therefore was liable for any unpaid rent due to the landlord. However, as the landlord was able to mitigate his loss in this matter by renting the unit to new tenants on April 01, 2010 I find he is entitled to recover rent for March, 2010 to the sum of \$1,300.00 from the tenant pursuant to section 67 of the *Act*.

The landlord continues to hold the tenants security deposit of \$650.00. The tenant has agreed in writing that the landlord may retain \$358.55 from this security deposit for unpaid utilities. Section 72(2) of the *Act* states:

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Therefore, I find the landlord may retain the remaining amount of the security deposit of \$291.45 (after deductions for the unpaid utility bill) in partial payment of the outstanding rent owed by the tenant.

I further find as the landlord has been successful with his application he may recover his \$100.00 filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent for March 2010	\$1,300.00
Filing fee	\$100.00
Less security deposit	(-\$650.00)

Total amount due to the landlord	\$1,108.55
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Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,108.55**. The order must be served on the respondent 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: June 02, 2010.

Dispute Resolution Officer