

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agents only. The tenant did not attend.

The landlord submitted confirmation that the tenant was served notice of hearing documents via registered mail on March 16, 2010. The landlord has including a print out of the tracking information regarding this registered mail service that confirms the tenant signed for the package on March 18, 2010.

Based on the documentary evidence submitted, I find the tenant has been served with notice of this hearing in accordance with the *Residential Tenancy Act (Act)*.

While the actual amount of the landlord's claim for the removal of the pesticide is less than the amount estimated in the landlord's application I accept an amendment to the application to include compensation for non-pecuniary damages in the amount of \$608.46.

Issues(s) to be Decided

The issues to be decided are whether the landlord is to a monetary order for unpaid rent; for compensation for damage or loss under the Act, regulation or tenancy agreement; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 26, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on May 5, 2009 for a 1 year fixed term tenancy beginning on May 5, 2009 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid on May 5, 2009;
- A summary of events of the dispute;
- A copy of a receipt dated March 19, 2010 and supporting documents from a hazardous material removal contractor for waste disposal and clean up of the rental unit in the amount of \$9391.54; and
- A copy of receipt from a local locksmith to change the locks on the rental unit in the amount of \$312.00.

The landlord submits the tenant failed to pay the full rent for February 2010 and owes the landlord \$400.00 for that month. The landlord states the tenant then gave notice to end the tenancy on February 20, 2010 effective February 28, 2010.

The landlord notes that the tenant, on March 3, 2010 spread Tempo pesticide inside the rental unit and in front of the unit's door, and that the tenant did not return any keys and has not returned to the building since this time.

The landlord notes the local fire department recommended an evacuation of the floor the rental unit was on and that the two neighbouring units the tenants were locked in their units until such time as it was safe to leave their units.

The landlord noted that in the written submission it indicates that they were not able to rent the unit out until April 1, 2010, in the hearing the landlord corrected this statement to May 1, 2010. The landlord explained that after the toxic material was removed and the hazardous material contractor had cleaned out the unit, the unit had to sit empty for 10 days before the landlord could go in and clean the unit to make it suitable for occupation.

The landlord provided testimony that confirmed the tenant was offered several times to complete a move out inspection and the landlord received no response from the tenant and no participation at an inspection.

Analysis

Section 45 of the *Act* stipulates that tenant may end a fixed term tenancy no earlier than the end of the tenancy as outlined in the tenancy agreement. As such, I find the tenant in this case is responsible for rent for the balance of February, the full months of March and April 2010.

I also find the tenant, through his action of contaminating the rental unit further restricted the landlord's ability to mitigate any lost rental income by re-renting, since the landlord could not re-rent the unit until the hazardous material clean up had been completed.

Based on the undisputed testimony and evidence of the landlord I find the tenant is responsible for the costs for the cleanup; for changing locks; for additional standard rental unit cleaning and for non-pecuniary damages for the additional stress of dealing with hazardous toxic material as direct result of this tenancy.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$13,462.00** comprised of \$2,800.00 rent owed; \$9,391.54 for removal of hazardous material; \$608.46 for non-pecuniary damages; \$312.00 for changing locks;

\$250.00 for general cleaning and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$12,862.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: July 09, 2010.

Dispute Resolution Officer