

DECISION

Dispute Codes MNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 13, 2010. Mail receipt numbers were provided in the Landlord's documentary evidence. Each Tenant is deemed to be served the hearing documents on April 18, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants despite each Tenant 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 pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the onset of the hearing the Building Manager requested to amend the application for dispute resolution to include the Limited company as the Landlord and himself as Agent for the Landlord.

The fixed term tenancy began on November 15, 2009 and was set to expire on October 31, 2010. Rent was payable on or before the first of each month in the amount of

\$850.00. The Tenants paid a security deposit of \$425.00 on October 26, 2009. A move-in inspection report was completed on November 16, 2009 and a move-out inspection report was completed on March 31, 2010 in the presence of a Tenant.

The Landlord referred to his documentary evidence, in support of his testimony, which included among other things a copy of the tenancy agreement, a copy of the move-in and move-out inspection report, a copy of the written notice to end tenancy issued by the Tenants, and a copy of the tenant ledger.

The Tenants vacated the rental unit on March 31, 2010, five months prior to the end of the fixed term lease. The Landlord confirmed the rental unit was re-rented as of April 15, 2010. The Landlord is seeking one half of a month's rent in the amount of \$425.00 for loss of rent for the period of April 1 – 15, 2010, plus \$400.00 for liquidated damages. The Landlord argued that he advertised the unit in the local newspaper, completed paperwork to re-rent the unit, and spent time showing the unit to prospective tenants.

Analysis

All of the testimony and documentary evidence was carefully considered.

The tenancy agreement and supporting evidence supports that the Limited company is listed as the Landlord and that the applicant is the building manager. Therefore I approve the Landlord's request to amend the application to include the Limited company name.

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

Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The evidence supports the Tenants vacated the rental unit five months prior to the end of the fixed term thus violating section 45 of the Act and the terms of their tenancy agreement. The Landlord was not able to re-rent the unit until April 15, 2010 which resulted in a loss of one half of month's rent. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve their claim in the amount of \$425.00 for loss of rent.

Section 5 of the tenancy agreement provides for \$400.00 in liquidated damages if the Tenants end the tenancy before the original term. This amount was agreed upon in advance and represents an estimated amount to cover costs incurred to re-rent the unit in the event the Tenants ended the tenancy prior to the end of the fixed term. The evidence supports the Landlord incurred costs to advertise the unit, to show the rental unit, and to complete the required checks and paperwork to acquire new tenants. Based on the aforementioned I find the Landlord has proven the test for damage or loss and I hereby approve their claim for \$400.00 liquidated damages.

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

Loss of ½ Month's Rent for April 2010 (1/2 of \$850.00)	\$425.00
Liquidated damages	400.00
Subtotal (Monetary Order in favor of the landlord)	\$825.00
Less Security Deposit of \$425.00 plus interest of \$0.00	- 425.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$400.00

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 **\$400.00**. 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: August 17, 2010.

Dispute Resolution Officer