

DECISION

Dispute Codes MNR MNSD FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, to keep the security deposit, and recovery of the filing fee. The Landlord originally applied through the direct request process which, upon review on June 16, 2010, was granted an Order of Possession and the monetary portion of the claim was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

The Landlord appeared, was 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 pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed receipt of the June 16, 2010 decision and advised that the hearing documents and Order of Possession were served to the Tenants in accordance with the Act. The Tenants are still occupying the rental unit.

The Landlord testified that the Tenants paid the monthly rent of \$775.00 for May and June 2010 rent. July 1, 2010 and August 1, 2010 rents were not paid. Later, payments were made on August 9, 2010 in the amount of \$300.00 and on August 12, 2010 in the amount of \$300.00 which leaves an outstanding balance of \$175.00 owing for July 2010 and \$775.00 owing for August 2010 for a total amount of unpaid rent of \$950.00.

Receipts were issued to the Tenants for “use and occupancy only”.

The Landlord is seeking a monetary order for \$950.00 unpaid rent plus the \$50.00 filing fee.

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 Landlord claims for unpaid rent of \$950.00 which is an accumulated total consisting of \$175.00 owing from July 2010 plus \$775.00 owing from August 1, 2010. Section 26 of the *Act* stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore, I find the Landlord has proven the test for damage or loss, as listed above and I hereby approve their claim of \$950.00 in unpaid rent.

The Landlord has been successful with their application, therefore I award recovery of the \$50.00 filing fee.

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

Unpaid Rent for July 2010	\$175.00
Unpaid Rent for August 2010	775.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,000.00
Less Security Deposit of \$375.00 plus Pet Deposit of \$375.00 plus interest of \$19.66 from April 7, 2007 to August 18, 2010	-769.66
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$230.34

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 **\$230.34**. 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: August 18, 2010.

Dispute Resolution Officer