

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit in partial satisfaction of his claim, and to recover the cost of the filing fee from the Tenants.

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 26, 2010. The Canada Post tracking number was provided in the Landlord's evidence. Each Tenant is deemed to have been served the hearing documents on May 1, 2010, five days after they were mailed in accordance with section 90 of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issue(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 Landlord testified and referred to his documentary evidence which included, among other things, a copy of the tenancy agreement, a letter received from the Tenants, a copy of the Canada Post receipts, and copies of letters from previous and current tenants.

The Landlord and Tenants entered into month to month tenancy on March 25, 2010 which was to be effective April 1, 2010 for the monthly rent of \$700.00. The Tenants paid a security deposit in the amount of \$350.00 on March 24, 2010.

The Tenants met with the Landlord on April 1, 2010, paid April's rent in the amount of \$700.00 and were given the keys to the rental unit. The Tenants told the Landlord they would be moving in over the next couple of weeks.

The Landlord stated that on April 14, 2010 he was advised by the Tenants that they have decided not to move into the rental unit and requested the return of their security deposit. The unit was not re-rented until May 15, 2010.

The Landlord is seeking an Order to keep the April 2010 rent of \$700.00 plus \$350.00 for ½ of May's rent plus recovery of the \$50.00 filing fee.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

The Landlord claims to retain the April 2010 rent of \$700.00 plus \$350.00 for ½ of May's rent because the Tenants did not provide him with notice to end the tenancy. Section 45 of the *Act* provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case the Tenants did not provide one month notice to the Landlord; therefore I approve the Landlord's request to retain the \$700.00 for April 2010 rent and for a monetary order for loss of rent for the period of May 1 – 14, 2010.

The Landlord has succeeded with his application; therefore I award recovery of the filing fee.

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:

Loss of Rent for May 1 – 14, 2010	\$350.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$400.00
Less Security Deposit of \$350.00.plus interest of \$0.00	-350.00
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 Tenant 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: September 07, 2010.

Dispute Resolution Officer