

## **DECISION**

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 29, 2010 to two different addresses. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on May 4, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite his 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 for unpaid rent pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began on August 15, 2003. The current monthly rent was payable on the first of each month in the amount of \$500.00 and the Tenant paid a security deposit of \$250.00 on November 19, 2004.

The Landlord referred to his documentary evidence, which consisted of copies of e-mails to and from the Landlord and Tenant between February 24, 2010 and March 23, 2010; a copy of the tenancy agreement, and a copy of a letter issued by the Tenant on August 19, 2009.

The Landlord advised the Tenant had established a routine where he would work out of province and return to the rental unit when he came to town to visit his family. The Tenant would always catch up on his late rent payments whenever he returned to town and left his possessions in the rental unit while he was out of town. It was not uncommon for the Tenant to have a balance owing on his rent. The Landlord advised that he became concerned when the months started adding up and then finally the Tenant advised the Landlord in December 2009 that he would not be returning so the Landlord moved the Tenant's possessions into the garage for storage.

The Landlord is seeking unpaid rent in the amount of \$3,900.00 which is comprised of \$300.00 owing for April 2009 and a discounted rent of \$450.00 per month for the eight months of May 2009 to December 2009. The Landlord did not want to charge the Tenant the full \$500.00 for rent as he had not occupied the unit and was not using electricity.

The Landlord is also seeking \$200.00 per month for storage of the Tenant's possession between the months of January 2010 to April 2010. The possessions took up approximately 70% of the garage during this time. The majority of the possessions have either been disposed of or given to charity however the Landlord is still storing some of the Tenant's personal possessions that he feels cannot be replaced.

The Landlord is asking for reimbursement of \$35.00 to have the Tenant's car towed to the Tenant's friends place. The Landlord did not know the date when this car was towed and did not submit a receipt for this claim. He is also seeking \$100.00 for the cost of moving the Tenant's possessions out of the unit and for cleaning costs.

The Landlord confirmed that the rental unit has been re-rented however he could not provide a date he entered into the new tenancy agreement.

### 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 Landlord 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 for unpaid rent of \$3,900.00 (comprised of \$300.00 owing for April 2009 plus \$450.00 for the eight months of May 2009 to December 2009); pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. In this case the Tenant had established a pattern of paying his rent late and catching up when he returned to town. I find the Landlord's attempt to work with the Tenant to collect the rent payment an effort to mitigate his losses in accordance with section 7 of the *Act*. The Tenant has 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 approve the Landlord's claim of \$3,900.00.

The Landlord is seeking additional compensation for items which include storage fees, towing the car, labour to move the Tenant's possessions, and labour costs to clean the rental unit. The Landlord did not apply for a monetary order for money owed or compensation for damage or loss under the *Act*, nor did he provide accurate dates or receipts to support these claims. Therefore I dismiss the Landlord's claims for storage

fees, towing the car, labour to move possessions, and labor to clean the rental unit, without leave to reapply.

The Landlord has been partially successful with his 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 that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for April 2009	\$300.00
Unpaid Rent for May 2009 to December 2009 (8 x \$450.00)	3,600.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$3,950.00</b>
Less Security Deposit of \$250.00 plus interest of \$8.85	-258.85
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$3,691.15</b>

### 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 **\$3,691.15**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 09, 2010.

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Dispute Resolution Officer