

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*, served personally to the Tenant on May 11, 2010, by a Bailiff hired by the Landlord.

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

Issues(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 month to month tenancy began on October 1, 2009 and ended April 29, 2010. Rent was payable on the first of each month in the amount of \$900.00. The Tenant paid a security deposit of \$450.00 on September 14, 2009.

The Landlord advised that after the Tenant failed to pay all of January, February and March 2010 rent a 10 Day Notice to End Tenancy was issued April 19, 2010 and served personally to the Tenant on April 30, 2010. The Landlord is seeking a monetary order in the amount of \$1900.00 which is comprised of \$100.00 for January, \$900.00 for February, and \$900.00 for March, 2010 rent.

The Landlord stated that he was also seeking reimbursement of \$12.50 for NSF charges he incurred. He confirmed that there is no mention of NSF charges in the 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 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 \$1,900.00, (\$100.00 for January, \$900.00 for February, and \$900.00 for March, 2010) pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that 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. I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent.

Section 7(2) of the *Residential Tenancy Regulation* provides that a landlord must not charge fees for returned cheques unless the tenancy agreement provides for that fee. Therefore I dismiss the Landlord's claim of \$12.50 for NSF charges.

The Landlord has been partially successful therefore I award recovery of the \$50.00 filing fee.

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 **\$1,950.00**. 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: September 21, 2010.

Dispute Resolution Officer