

## **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 May 31, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing documents.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were 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

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective May 1, 2010 and the Tenant was required to vacate the rental unit at the end of the fixed term on June 30, 2010. Rent was payable on the first of each month in the amount of \$1,200.00. The Tenant paid \$600.00 as a security deposit and provided the Landlord with two post dated cheques as payment for May and June 2010 rent. The Tenant e-mailed the Landlord May 2, 2010 at 8:34 p.m. to inform the Landlord that she was not happy about the level of cleanliness in the rental unit, did not like the way the lock operates on the door, that she has put stop payments on her rent payments, would not be moving in as previously agreed, and she would drop the keys off at his sister's upstairs. The Tenant confirmed that she had viewed the rental unit prior to entering in to the tenancy agreement.

The Landlord's sister testified as his witness and confirmed that while she was not designated as the Landlord's agent, she did reside upstairs, she did provide the tenant

her phone number in the case of an emergency, and she did receive the keys for the rental unit from the Tenant on May 9, 2010. The Witness testified that the Tenant made no effort to contact her in relation to the condition of the rental unit and in fact the witness had seen the condition of the rental unit when the Landlord vacated and she does not agree with the Tenant's statements.

In closing the Tenant stated that she did not feel comfortable that her concerns would be addressed by the Landlord.

The Landlord is seeking the two month's rent less the security deposit for a total of \$1,800.00. (2 x \$1200.00 - \$600.00).

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 44 (1)(b) provides that a tenancy ends on the date specified as the end of the tenancy if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term. Section 45 (2) states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy that is effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

There is no provision in the Act that allows a tenant to end a fixed term tenancy agreement because she is not in agreement with the cleanliness of the unit or is concerned about the way a lock operates. Rather, the tenant would be required to provide the landlord with notice of the deficiencies and allow the landlord a reasonable amount of time to remedy the situation.

Based on the aforementioned I find that in this case the Tenant could not end the tenancy agreement until the end of the fixed term which was June 30, 2010 and therefore is responsible to pay the rent in accordance with section 26 which states that a tenant must pay rent when it is due under the tenancy agreement. Therefore I approve the Landlord's claim for unpaid rent of May and June 2010.

The Landlord has been 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 May and June 2010 (2 x \$1,200.00)	\$2,400.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,450.00</b>
Less Security Deposit of \$600.00 plus interest of \$0.00	-600.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,850.00</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 **\$1,850.00**. 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: October 18, 2010.

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Dispute Resolution Officer