

DECISION

Dispute Codes MNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

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. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The parties confirmed that neither of them submitted evidence in support of or in defense of this claim.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective May 1, 1999 which was set to switch to a month to month tenancy after April 30, 2000. Rent was payable on the first of each month in the amount of \$845.00 and the Tenant paid a security deposit of \$325.00 on May 1, 1999.

The Landlord testified that the Tenant vacated the rental unit after a Notice to End Tenancy was posted to his door. The Tenant communicated to the Landlord that he would be out of the unit by the end of October 2009. The Landlord's entered the unit on November 1, 2009 and found that the Tenant had vacated. The Tenant's October 1, 2009 rent payment was returned N.S.F. so the Landlord is seeking \$845.00 for October 2009 rent plus a \$35.00 NSF fee. The Landlord read section 8 of their tenancy agreement which stipulates that the Tenant would be charged \$20.00 for each returned cheque or the then current rate being charged by the Landlord's bank, whichever is more.

The Tenant confirmed that his October 1, 2009 rent payment was returned NSF and he has not paid the Landlord for the October 2009 rent because he alleges that his security deposit of \$325.00 has not been returned to him. He confirmed that he did not provide the Landlord his forwarding address in writing.

The Landlord is of the opinion that the Tenant was issued a full refund of his security deposit and that the Tenant picked up the refund cheque from her office on November 2, 2009.

Analysis

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.

The Landlord claims for unpaid rent of \$845.00 for October 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. The evidence supports the Tenant's payment was returned NSF and the Tenant neglected to provide a replacement payment. Based on the aforementioned 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. Therefore I approve the Landlord's claim of \$845.00 for unpaid rent.

Section 7 of the *Residential Tenancy Regulation* states that a landlord may charge a non-refundable fee for returned cheques not more than \$25.00 or an amount that is equal to the service fee charged by the financial institution as long as the tenancy agreement provides for such fees. In this case the evidence supports that Section 8 of the tenancy agreement provides for a \$20.00 NSF charge or the amount charged by the financial institution, whichever is the greater amount. In the absence of documentary evidence to support the Landlord was in fact charged \$35.00 by their financial institution I hereby award the Landlord the amount of \$20.00.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for October 1, 2009	\$845.00
NSF fee	20.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$865.00

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 **\$865.00**. 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: October 21, 2010.

Dispute Resolution Officer