



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, FF, O

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement, and for damage to the unit, site or property. The landlord also seeks to recover the filing fee for this application. At the outset of the hearing the landlord withdraws his application for damage to the unit and reduced his monetary claim to recover a loss of revenue only.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenants on July 05, 2010. The person who served the tenants appeared at the hearing and gave affirmed testimony that service of the hearing documents took place as declared.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

The tenants submitted documentary evidence but failed to provide a copy of this to the landlord. Therefore the tenant's documentary evidence has not been considered in this hearing.



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Issues(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started in approximately May or July, 2003. The tenants paid a monthly rent of \$1,350.00 which was due on the first of each month. The tenants paid a security deposit which was dealt with at a previous hearing held in June, 2010.

The landlord testifies that at the previous hearing he was awarded an Order of Possession and served this upon the tenants. The tenants were supposed to move from the rental unit by June 30, 2010. However, the landlord states they did not move out until July 04, 2010. He states the tenants started to move out on July 01, 2010 but a fire was started at the rental unit and the police and fire service prevented the tenants retrieving the remainder of their belongings. The landlord states the fire report shows that the fire was started by a person in the unit with either a candle or match. However, he states he has not provided that report in evidence.

The landlord states the tenants returned on July 04, 2010 to get their belongings and move from the unit when another fire occurred at the unit. The landlord states he now only seeks to recover a loss of rental income from July, 2010 as the tenants did not move out as required on June 30, 2010 and due to their actions in starting a fire he could not re-rent the unit for July.

The tenant disputes the landlords' testimony. She testifies that they did move out on July 01, 2010 during the day. They returned during the evening to get the remainder of

their belongings but were prevented from doing so because there was a fire at the property. The police and fire service prevented them gaining access to their belongings. The tenant testifies that she has no idea how the fires started. She states they returned on July 04, 2010 to get their belongings and were not aware that another fire had occurred on that day.

Analysis

I have carefully considered the affirmed evidence of both parties. In this matter the landlord has the burden of proof that the tenants acted in a willful or negligent manner which caused the fire and prevented him from re-renting the rental unit throughout July. When the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the tenants were responsible for the fire and as such cannot be held liable for rent for the whole of July, 2010.

However, the tenants were required to vacate the rental unit by June 30, 2010 and the *Act* states they must vacate by 1.00 pm on that day. By the tenants own admission did not move out until July 01, 2010 therefore they are deemed to have overheld at the rental unit and are consequently responsible for rent for one day in July only to the sum of **\$43.54** pursuant to section 67 of the *Act*. As both parties agree that the tenants were prevented from returning to the unit on July 01, 2010 to remove the remainder of their belongings they cannot be held responsible for rent up to July 04, 2010.

As the landlord has been partially successful with his claim I find he is entitled to recover half his filing fee to the sum of **\$50.00** pursuant to section 72(1) of the *Act*.



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Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$93.54**. The order must be served on the respondents 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: November 17, 2010.

Dispute Resolution Officer