

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's building manager (the landlord) testified that she sent a copy of the application for dispute resolution to the tenant on September 2, 2010 by registered mail. She provided the Canada Post Tracking Number to confirm this mailing. The tenant confirmed having received the dispute resolution hearing package and the landlord's evidence. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for loss arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including the signed residential tenancy agreement, copies of cheques submitted by the landlord, miscellaneous notes, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The parties agreed that the parties signed a fixed term tenancy agreement on August 10, 2010. The tenant was to occupy the rental unit on September 1, 2010 with a scheduled termination date for this fixed term tenancy of August 31, 2011. Monthly rent was set at \$1,080.00, payable on the first of the month. The tenant was also to pay an additional \$20.00 for parking. The parties agreed that the tenant paid the landlord a security deposit of \$540.00 on August 13, 2010, which the landlord continues to hold.

The tenant did not dispute the landlord's written and oral evidence that the tenant provided the landlord with a cheque for \$1,100.00 for the September 2010 rent payment on or about August 27, 2010. The parties agreed that the tenant stopped payment on this cheque. The landlord testified that she did not know that the tenant had stopped payment on this cheque until approximately September 8, 2010, when she was advised of this by her business office.

The landlord also submitted into evidence a copy of an August 30, 2010 note to the landlord from the tenant which read in part as follows.

...As I mentioned to you, I won't be taking up your property for rent as arranged, this is due to financial difficulties am facing at the moment and the Other reason is that your rental conditions seems to be unfavourable for me... (as in original)

In this note left in the landlord's mail slot, the tenant explained that the verbal conditions of the tenancy agreement as provided orally by the landlord were not ones with which he felt comfortable. He stated that he could not continue with this contract and would appreciate having his security deposit returned to him as soon as possible.

The landlord testified that the tenant asked for the keys to the rental unit when she visited him near his workplace at the time he handed her his September 2010 rent cheque. She said that the landlord does not give keys to a rental unit until a tenant is entitled to occupy a rental unit. She testified that on the day that the tenant can legally occupy the rental unit, the landlord and tenant enter the rental unit together to conduct a joint move-in condition inspection in accordance with the *Act*. She said that the tenant

could have legally obtained access to the rental unit as of September 1, 2010, but by then had sent her the August 30, 2010 note stating that he did not wish to continue with the residential tenancy agreement. The parties both testified that they tried to get in contact with one another after September 1, 2010, but maintained that the other party did not return their calls.

On September 2, 2010, the landlord applied for a monetary award of \$590.00 for authorization to retain the security deposit and to recover the filing fee for the application. Once the landlord knew that the tenant would not be occupying the rental unit, she advertised the rental unit in a local newspaper, on Craigslist and at the building. She testified that she re-rented the rental unit on September 13, 2010 to a new tenant who occupied the premises on October 1, 2010 for a monthly rent of \$1,030.00 plus the \$20.00 parking fee. The landlord submitted an amended application requesting a monetary award of \$1,100.00 for the loss of rent for September 2010.

The tenant testified that he told the landlord in late August 2010 that he was still interested in occupying the rental unit by mid-September although he was encountering delays in moving from Saskatchewan. He said that the landlord was unwilling to let him move into the rental unit in mid-September, even if he paid full rent for that month.

Analysis

I find that a fixed term residential tenancy agreement was established on August 10, 2010, when the tenant and landlord signed this agreement. Although there is differing evidence with respect to who tried to call one another and when, the tenant confirmed that he sent the landlord the August 30, 2010 note advising the landlord that he was not interested in renting this suite from the landlord as arranged. He also testified that he stopped payment on his September 2010 rent cheque.

In accordance with section 7(1) of the *Act*, I find that the landlord is entitled to her requested monetary award of \$1,100.00 for unpaid rent and parking for September 2010, which the tenant committed to pay to the landlord. I issue this monetary award as

I am satisfied that the landlord attempted to mitigate the tenant's losses as required by section 7(2) of the *Act* by taking adequate measures to re-rent these premises to another tenant as soon as she received notice that the tenant did not wish to live there.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of this award. Since the landlord was successful in this application, I allow her to recover her \$50.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allow the landlord to retain the tenant's security deposit and to recover her filing fee:

Item	Amount
September 2010 Losses	\$1,100.00
Less Security Deposit	-540.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$610.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.