



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on September 17, 2010. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on September 22, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served notice of today's hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to a monetary order as a result of this breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement effective September 1, 2010 which was set to switch to a month to month tenancy after August 31, 2011. Rent was

payable on the first of each month in the amount of \$1,050.00 and the Tenant paid \$525.00 security deposit on August 30, 2010.

The Landlord testified the Tenant vacated the unit September 2, 2010 without proper notice to the Landlord. The Tenant attended the move out inspection September 2, 2010 and provided her forwarding address on the move-out form. The September 1, 2010 rent payment was returned NSF. The unit has been re-rented as of October 14, 2010.

The Landlord is seeking \$1,050.00 for September rent, \$474.19 for loss of rent for October 1 – 14, 2010, \$300.00 liquidated damages clause for breaking the fixed term lease, \$25.00 NSF fee as provided in #3(a) of the tenancy agreement, \$20.00 late payment fee of \$20.00 as provided in #3(a)(i) of the tenancy agreement, and the \$50.00 filing fee.

Analysis

I have carefully considered the testimony and evidence provided by the Landlord which included, among other things, a copy of the tenancy agreement, the move-in and move-out inspection report, and copies of advertisements to re-rent the unit.

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 evidence supports the tenancy ended on September 2, 2010, when the Tenant vacated the unit without proper notice. Section 45(2) of the *Act* provides that a tenant may end a fixed term lease by provided the landlord with notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The Landlord claims for unpaid rent of \$1,050.00 for September 1, 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. Therefore I approve the Landlord's claim of \$1,050.00.

The tenancy agreement provides for \$20.00 late payment fees and \$25.00 NSF fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the September 1, 2010 rent was returned NSF and was late. Therefore I find the Landlord has proven the test for loss and I approve their claim in the amount of \$45.00.

The rental unit was not re-rented until October 15, 2010 which caused the Landlord to suffer a loss of rent of \$474.19 as a result of the Tenant's breach. Therefore, I find the Landlord has proven the test for loss, as listed above, and I approve their claim of \$474.19.

The tenancy agreement provides for liquidated damages of \$300.00. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlords testimony that this amount is reasonable as she has had to advertise the unit, show it as often as possible, and to conduct checks on potential customers. Therefore I approve the Landlord's claim of \$300.00.

The Landlord has succeeded with their 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 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 September 1, 2010	\$1,050.00
NSF Charge and Late payment fee (\$25.00 + 20.00)	45.00
Loss of rent for October 1 – 14, 2010	474.19
Liquidated damages	300.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,919.19
Less Security Deposit of \$525.00 plus interest of \$0.00	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,394.19

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 **\$1,394.19**. 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: January 28, 2011.

Residential Tenancy Branch