

DECISION

Dispute Codes OPR, MNDC, FF

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although we waited until 1:42 p.m. in order to enable her to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on January 6, 2011. She also entered into written evidence a copy of the Canada Post Tracking Number confirming that she sent the tenant a copy of the dispute resolution hearing package by registered mail on February 2, 2011. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

The landlord testified that she no longer needed an Order of Possession because the tenant vacated the rental unit on January 29, 2011.

The landlord also testified that the tenant paid the outstanding rent owing from December 2010 and January 2011 when she vacated the rental premises. The landlord revised the amount of her application for a monetary award from \$1,935.00 to \$1,040.00. Her revised application requested a monetary award of \$750.00 for loss of rent for February 2011, a \$20.00 late fee for non-payment of rent for February 2011, and reimbursement for an unpaid utilities bill of \$270.00, she received earlier on the day of the hearing from the local utility company.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this fixed-term tenancy commencing on October 23, 2010 was scheduled to end October 31, 2011. Monthly rent was set at \$750.00, with the tenant responsible for paying utilities. The landlord continues to hold the tenant's \$387.50 security deposit plus interest paid on October 15, 2010.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term tenancy agreement because she failed to pay her rent in accordance with that agreement. As such, the landlord is entitled to compensation for losses resulting from the tenant's failure to comply with the terms of her tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I accept that the landlord has attempted to the extent that was reasonable to re-rent the premises for February 2011, but has been unable to do so. She said that she has listed the suite on two rental websites. She said that she also has two other identical rental suites which remain empty and are advertised on those websites. I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's loss. I issue a monetary award in the landlord's favour in the amount of \$750.00, the amount of monthly rent for this rental unit.

I dismiss the landlord's request for a monetary award for a late fee for February 2011. The landlord did not submit any written evidence to support this request, nor did she provide a copy of the provision in the Residential Tenancy Agreement which allowed for this type of payment to the landlord.

I am not satisfied that the tenant has been properly notified that the landlord is seeking a monetary award for recovery of the tenant's unpaid utility bills. There is no mention of this item in the landlord's application as the landlord only became aware of this expense on the morning of the hearing. In addition, the landlord provided no written evidence to demonstrate that the landlord has received a bill for this amount. I dismiss the landlord's application for a monetary award for unpaid utilities with leave to reapply.

The landlord testified that she continues to hold the tenant's security deposit of \$387.50 plus interest from October 15, 2010 until the date of this decision. Over that period, no interest is payable. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover losses arising out of this tenancy, the filing fee for this application, and to retain the tenant's security deposit plus interest.

Item	Amount
Loss of Rent for February 2011	\$750.00
Less Security Deposit	-387.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$412.50

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.