

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for unpaid rent. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant agreed that he received the landlord's dispute resolution hearing package by registered mail shortly after the landlord sent it to him on November 26, 2010. I am satisfied that the landlord served this document to the tenant in accordance with the *Act*.

The parties confirmed that the landlord handed the tenant a 1 Month Notice to End Tenancy for Cause (the Notice) on September 8, 2010. In that Notice, the landlord identified October 8, 2010 as the date when he was seeking an end to this tenancy.

The landlord provided written evidence regarding an October 22, 2010 decision of Dispute Resolution Officer (DRO) xxxx regarding the tenant's application for a monetary award to recover the cost of emergency repairs, for compensation for damage or loss under the Act or tenancy agreement and to recover the tenant's filing fee for that application. Neither DRO Xxxx's monetary Order of \$129.35 in the tenant's favour nor the enforcement of that Order are within my jurisdiction to consider.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced initially as a fixed term tenancy on April 1, 2009. It converted to a periodic tenancy after the expiration of the fixed term. Monthly rent was set at \$750.00 per month, payable on the first of each month. The landlord said that he received a \$475.00 security deposit from the tenant on or about April 1, 2009. The tenant said that his security deposit was \$525.00. Both parties agree that the landlord has returned the tenant's security deposit plus interest. The return of the tenant's security deposit is not before me.

The landlord testified that the tenant vacated the rental unit on October 8, 2010, at which time the landlord retrieved the keys inside the rental unit. The tenant testified that this occurred by September 25, 2010.

The landlord summarized his request for a monetary award in the following terms:

Item	Amount
Unpaid August 2010 Rent	\$50.00
Unpaid September 2010 Rent	750.00
Rent Owing from October 1 to 8, 2010	193.52
Rent Paid September 7, 2010	-230.00
Rent Paid October 12, 2010	-480.00
Total Monetary Award Requested	\$283.52

The parties agreed that the tenant made each of the payments cited above by cash and the landlord provided no receipts. The tenant said that he paid whatever he owed the landlord before the October 20, 2010 hearing. He said that his first payment was not \$230.00, as claimed by the landlord. The tenant had no information regarding the dates of his September and October rent payments. The tenant noted that the landlord's September 8, 2010 letter to the tenant stated that the tenant had paid \$320.00 of the full rental amount of \$750.00 for September 2010, an amount that varied from the landlord's "Summary of Rental Payments" which identified the amount paid as \$230.00.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that there was outstanding rent owing from this tenancy.

In this case, there is conflicting evidence regarding the date when the tenant vacated the rental unit and the amounts paid by the tenant.

The landlord claimed unpaid rent until October 8, 2010, the date he identified in the Notice for the end of this tenancy. However, a 1 Month Notice given to the tenant on September 8, 2010 could not take effect until October 31, 2010. Although the tenant complied with the effective date identified in the Notice, I find nothing in the landlord's Notice that would disentitle the landlord from receiving the entire rent due for September 2010. As such, I find the tenant responsible for paying any unpaid rent owing for August and September 2010.

In determining the amount of unpaid rent owing for August and September 2010, I accept the landlord's evidence that the tenant was responsible for paying \$50.00 in

rental arrears from August 2010 and \$750.00 for September 2010. I vary the amount identified by the landlord as paid by the tenant on September 7, 2010 to \$320.00, the amount identified in the landlord's September 8, 2010 letter to the tenant. I accept the landlord's written evidence that the tenant paid \$480.00 on October 12, 2010. Based on the above calculations, I find that the tenant paid the entire \$800.00 in rental arrears from August and September 2010.

Under normal circumstances, the tenant would also have been responsible for rent owing as of October 1, 2010. However, I find that the landlord's error in identifying a correct effective date in his Notice eliminates the tenant's responsibility for rent for any portion of October 2010. The landlord made this mistake which is in contravention of the *Act*. The *Act* states that the first party that contravenes the *Act*, the *Regulation* or the tenancy agreement is responsible for any loss arising out of that contravention. In addition, there is conflicting evidence regarding when the rental premises were actually vacated by the tenant and the keys left for the landlord. The landlord provided no evidence to effectively contradict the tenant's sworn testimony that he vacated the rental unit, removed all of his possessions from the rental unit, and left the keys for the landlord as per an email exchange with the landlord well before the end of September 2010. The tenant is not held responsible for the landlord's apparent failure to check on the availability of the rental unit before the incorrect effective date of September 8, 2010 issued by the landlord. In coming to my decision, I also note that the landlord did not issue receipts for any of the cash payments made by the tenant, payments which were in dispute during this hearing. For the above reasons, I find that the landlord is not entitled to a monetary Order for any rent for October 2010.

Conclusion

I dismiss the landlord's application for a monetary Order for unpaid rent as I am satisfied that the tenant paid all rent owing from this tenancy. 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*.