



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR MNSD 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 the claim, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant at the Tenant's place of employment on November 30, 2010.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenant, despite being served notice of the hearing in accordance with the Residential Tenancy Act (Act).

Issue(s) to be Decided

1. Has the Tenant breached the Act, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The fixed term tenancy commenced on November 1, 2010 and was set to switch to a month to month tenancy after October 31, 2011. The Tenant paid a security deposit in the amount of \$675.00 on November 1, 2010 and rent is payable on the first of each month in the amount of \$1,350.00.

The Landlord testified that the Tenants' first month's rent was returned insufficient funds. After he received the notice from his bank he attempted to collect the money from the Tenants who kept telling him they would pay in cash in a few days. When

payment was not received a 10 Day Notice to End Tenancy was served to the Tenants in person on November 15, 2010. The Tenants vacated the property by November 25, 2010.

The Landlord advertised the unit on the internet beginning November 15, 2010 and was able to re-rent it at the lower amount of \$1,300.00 as of January 15, 2011. The Landlord is seeking loss of rent for November and December 2010 and ½ of January rent less the security deposit which totals \$2,700.00. (\$1,350.00 + \$1,350.00 + \$675.00 - \$675.00).

Analysis

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 Tenants.

Section 26 of the *Act* provides that a Tenant must pay rent when it is due in accordance with the tenancy agreement. In this case the evidence supports the Tenant failed to pay the November 2010 rent and then vacated the property during the last week of the month.

The Landlord claims for unpaid rent for November 2010, December 2010, and ½ of January 2011; however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which is, November 25, 2010, pursuant to section 44(1)(a)(ii) of the *Act*. That being said, the tenancy has ended however the Tenant's obligation to the fixed term tenancy agreement has not ended.

The Landlord's claim is for unpaid rent for November 2010 of \$1,350.00 plus loss of rent for December 2010 and ½ of January 2011. Therefore I approve the Landlord's request of **\$1,350.00** for unpaid rent for November 2010 plus **\$2,025.00** (\$1,350.00 + \$675.00) for loss of rent for December 2010 and ½ of January 2011, pursuant to section 67 of the *Act*.

Filing Fee \$50.00. The Landlord has been successful with his application; therefore I award recovery of the 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 Tenants' security deposit as follows:

Unpaid Rent for November 2010	\$1,350.00
Loss of Rent for December 2010 and ½ of January 2011	2,025.00
Recovery of the filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$3,425.00
Less Security Deposit of \$675.00 plus interest of \$0.00	<u>-675.00</u>
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,750.00

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 **\$2,750.00**. The Order must be served on the 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: April 11, 2011.

Residential Tenancy Branch