



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents and amended application, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 3, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the Landlord's submission I find the Tenant was sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy 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, pursuant to section 67 of the *Act*?

Background and Evidence

The Landlord affirmed she entered into a one year fixed term tenancy agreement with the Tenant that began on March 1, 2011. The Landlord advised the tenancy would be re-assessed at the end of the fixed term to determine if or how it would continue. Rent was payable on the first of each month in the amount of \$1,200.00 and on June 27, 2011 the Tenant paid \$600.00 as the security deposit.

The Landlord advised the Tenant left a voice message on February 4, 2012 advising she was ending her tenancy as of February 29, 2012. The Landlord contacted the

Tenant and advised her that she could not accept the short notice and the Tenant would be responsible to pay March rent if the Landlord could not re-rent the unit. Then the Landlord was notified that the Tenant's February 1, 2012 rent cheque was being returned by the bank NSF. The Tenant vacated the unit by February 20, 2012 and returned a few days later to do the walk through inspection with the Landlord, at which time she gave the Landlord her forwarding address.

The Landlord was not able to re-rent the unit until April 1, 2012 therefore she is seeking February unpaid rent and March 2012 loss of rent. The Landlord advised that the Tenant has not yet paid the municipal utility bill which as of April 4, 2012 had an outstanding balance of \$374.19. This amount reverts to the responsibility of the Landlord if the Tenant fails to pay it so the Landlord is seeking to recover this cost as the Tenant no longer lives in this municipality.

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 tenant.

The Landlord claims for unpaid rent of \$1,200.00 for February 1, 2012 as the Tenant's payment was returned NSF, 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. Based on the aforementioned I find the Landlord has met the burden of proof and I award her a monetary claim of **\$1,200.00** for February 2012 unpaid rent.

The Landlord is seeking loss of rent for March 2012 as the Tenant failed to provide a full one month's notice that she would not be continuing the tenancy agreement. In the absence of evidence from the Tenant to dispute the Landlord's claim, I accept the Landlord's testimony that she suffered a loss of rent for March 2012 due to lack of proper notice to end from the Tenant as is required under section 45(2) of the *Act*.

Based on the aforementioned I find that the Landlord has succeeded in proving her loss, as listed above, and I approve their claim for **\$1,200.00** for loss of March 2012 rent.

I accept the Landlord's evidence that the Tenant was required to pay utilities and has since failed to pay the municipal utilities of \$374.19 which will be charged to the Landlord. Therefore, in accordance with section 67 of the Act, I award the Landlord **\$374.19** for unpaid utilities.

The Landlord has succeeded with her 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 that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent February 2012	\$ 1,200.00
Loss of Rent March 2012	1,200.00
Unpaid Utilities	374.19
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 2,824.19
LESS: Security Deposit \$600.00 + Interest 0.00	<u>600.00</u>
Offset amount due to the Landlord	<u>\$ 2,224.19</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$2,224.19**. This Order is legally binding and must be served upon the Tenant.

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 24, 2012.

Residential Tenancy Branch