

Decision

Dispute Codes: MNR, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent for early termination of tenancy. The landlord was also claiming reimbursement for utilities owed when the tenancy ended .

Despite being served by registered mail sent on March 14, 2012, the respondent did not appear. .

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for loss of rent and compensation for unpaid utilities.

Background and Evidence

The tenancy began in November 2011 and rent was set at \$1,200.00. A security deposit of \$600.00 was paid. The tenancy agreement was for a fixed term.

The landlord testified that the tenant ended the tenancy and moved out on December 28, 2011. The landlord testified that they were unable to find a new tenant until March 1, 2012 and therefore incurred a loss of \$2,400.00. The landlord testified that the tenant had subsequently paid the utility bill and after being credited with the \$600.00 security deposit was in arrears for \$1,800.00. The landlord testified that the tenant had given the landlord a series of post-dated cheques which had since reduced the debt to \$1,100.00.

According to the landlord, they still have two post-dated cheques sent by the tenant; one for \$500.00 dated May 18, 2012 and one for \$600.00 dated June 1, 2012. These amounts would resolve the debt. However, the landlord stated that they are seeking a monetary order for the \$1,100.00 to ensure that the debt is covered if the tenant's remaining cheques fail to clear.

Analysis

With respect to the loss of rent, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Based on the evidence, I find that the tenant did violate the fixed term tenancy agreement by prematurely terminating it and the landlord did incur a loss as a result, despite efforts to mitigate the loss by advertising the vacancy. In this regard, I find that all elements of the test for damages have been met.

I also accept that the tenant has been paying the money owed in increments through post-dated cheques, two of which are still pending. I find that, if these two last cheques are successfully cashed, then the entire amount claimed by the landlord will be satisfied.

That being said, under the Act, the landlord is entitled to a monetary order for \$1,100.00, which will not be enforced by the landlord if the tenant's final two cheques are honoured by the bank.

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Conclusion

I hereby grant the Landlord an order under section 67 for \$1,100.00. This order may be served on the Respondent if all of the debt is not satisfied by June 2, 2012 and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application, including the claim for the cost of filing, is dismissed without leave.

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: May 16, 2012.

Residential Tenancy Branch