

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, authorization to keep all or part of the security deposit, and to recover the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that she received the evidence package from the landlord and had the opportunity to review the evidence prior to the hearing. The tenant confirmed that she did not submit any evidence in response to the landlord's application. I find the tenant was served in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The original tenancy agreement was a fixed term tenancy agreement which began on March 1, 2011. On September 1, 2012, the parties signed a new month to month tenancy agreement. Rent in the amount of \$1,400.00 was due on the first day of each month. The tenant paid a security deposit \$700.00 at the start of the tenancy which the landlord continues to hold.

The parties agreed that the tenant provided written notice on September 24, 2012 that she would be vacating the rental unit on September 30, 2012. The landlord stated that on or about September 22, 2012 she was asked verbally by the tenant if she could sublet the rental unit for the month of October 2012. The landlord advised the tenant

that she did not approve of a sublet. The tenant stated that she provided late notice due to issues relating to her son. The tenant apologized to the landlord for providing late notice during the hearing.

The landlord is claiming \$1,400.00 for unpaid October 2012 rent and the filing fee of \$50.00.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Notice from tenant – Based on the testimony of the tenant, I find the tenant breached section 45 of the *Act* by providing written notice on September 24, 2012 that she would be vacating the rental unit on September 30, 2012. The tenant should have served the landlord with her written notice on or before August 31, 2012 for the tenant to have vacated the rental unit on September 30, 2012 without breaching the *Act*. I find the landlord had no obligation to agree to a sublet in a month to month tenancy in the matter before me.

Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and I grant the landlord **\$1,400.00** for unpaid rent for the month of October 2012.

As the landlord has succeeded with her application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the has established a total monetary claim in the amount of **\$1,450.00** comprised of \$1,400.00 for unpaid October 2012 rent, and the \$50.00 filing

fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit which has accrued no interest to date as follows:

Unpaid October 2012 rent	\$1,400.00
Filing fee	\$50.00
Subtotal	\$1,450.00
<i>(Less tenant's security deposit which has accrued no interest)</i>	<i>-(\$700.00)</i>
Total owing by the tenant to the landlord	\$750.00

Conclusion

I find that the landlord has established a total monetary claim of **\$1,450.00**. I authorize the landlord to retain the full security deposit of \$700.00 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance owing to the landlord in the amount of **\$750.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 09, 2013.