

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 30, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on August 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on May 1, 2009 and ended on June 30, 2009. The monthly rent was payable on the first of each month in the amount of \$450.00 and the Tenant paid a security deposit of \$225.00 on May 5, 2009.

The Landlord testified that he received the Tenant's written notice to end the tenancy, in person, on June 22, 2009 and that the notice was received eight days before the Tenant vacated the rental unit.

The Landlord referred to his documentary evidence and confirmed receipt of the Tenant's July 21, 2009 letter and forwarding address via registered mail on July 23, 2009.

The Landlord argued that the Tenant did not provide him with proper written notice to end the tenancy and so he is seeking \$450.00 for July 2009 rent and \$28.36 for unpaid utilities. The Landlord testified that he collects \$30.00 at the beginning of each month as advance payment towards utilities and when the utility bills arrive the Landlord calculates the Tenant's portion at 10% of the overall bill and if the Tenant's usage was over \$30.00 for the month the Tenant is required to pay the difference.

The Landlord stated that he could not remember the tenant's name who rented the unit after the respondent Tenant. The Landlord argued that the replacement tenant only lived in the rental unit for one month. The Landlord testified that when tenants rent his units for short periods of time he does not have them sign a tenancy agreement and the tenants pay him in cash.

The Landlord testified that he provided the replacement tenant with a handwritten receipt for his rent payment; the Landlord did not have a copy of the receipt as it was not written from an official receipt book. The Landlord stated that he dealt with the replacement tenant via e-mail and that he did not submit evidence to confirm the date he entered into the agreement with the replacement tenant. The Landlord stated that he did not have the dates in front of him to provide testimony on when the arrangement was made with the replacement tenant.

The Landlord testified that he advertises his rental units at the local university to acquire new tenants.

Analysis

I find that in order to justify payment of damage or loss under sections 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The Landlord has applied for a monetary order for unpaid rent in the amount of \$450.00 for July 2009. In this case the Tenant ended the tenancy in June 2009 so there was no rent payable for July 2009. The Landlord wrote on his application for dispute resolution "Tenant didn't give proper one month notice. Gave letter on June 22, 09 and left June 30, 09. Seeking for July rent to retain deposit to set off for July's rent and utility bills" (displayed as written on the application). After reviewing the Landlord's statement and application I have determined that the Landlord was applying for money owed for loss

under the Act and not unpaid rent. As the Tenant was served a copy of the Landlord's application in accordance with the Act, I find that the Tenant was given notice of what the Landlord is seeking compensation for and I have approved an amendment to the Landlord's application to claim for loss of rent and not unpaid rent.

The Tenant provided eight (8) days written notice to end a month to month tenancy agreement in contravention of section 45 of the Act which provides that a tenant may end a month to month tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

Although the Tenant failed to provide proper notice to end tenancy the Landlord provided documentary evidence in the form of a letter issued by the Tenant where the Tenant claims the tenancy was to be for only two months and that the Landlord had someone rent the unit as of July 2009. The Landlord did not provide documentary evidence to support that the rental unit was vacant for the full month of July 2009 nor was the Landlord able to provide testimony to confirm who rented the unit after the Tenant, when they entered into an agreement to rent the unit, what date they took possession or exactly when the replacement tenant moved out. Based on the aforementioned I find that the Landlord has failed to meet the four part test for damage or loss as listed above and I hereby dismiss his claim for loss of rent, without leave to reapply.

The Landlord is seeking \$28.36 in unpaid utilities and based on the Landlord's testimony the Tenant had prepaid \$60.00 (\$30.00 for each month, May and June 2009). Based on the Landlord's testimony the Tenant was required to pay \$30.00 for utilities to be applied towards the Tenant's usage once the bills were received. The Landlord provided an accounting whereby the tenant was responsible for the following utilities for May and June 2009: hydro usage for each Tenant (10%) = \$1.0852 per day and water usage for each tenant (10%) = \$0.3659 per day. The Landlord has claimed for 60 days of utility usage from the Tenant which is \$65.11 for hydro (60 x \$1.0852) and \$21.95 for water (60 x \$0.3659) for a total utility usage of \$87.06. The Tenant prepaid utilities in the amount of \$60.00 (\$30.00 for each month) leaving a balance owing to the Landlord

of \$27.06. The evidence before supports the Landlord's testimony that the Tenant was responsible to pay the Landlord for utility costs. Based on the aforementioned I find that the Landlord has proven the test for damage and loss as listed above and I hereby approve his claim in the amount of \$27.06.

As the Landlord has been partially successful with his application I find that he is entitled to recover the cost of the filing fee from the Tenant for this application.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid utilities for hydro and water \$87.06 less prepayment of \$60.00q	\$27.06
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$77.06
Less Security Deposit of \$225.00 plus interest of \$0.00 from May 5, 2009 to November 3, 2009	-225.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$147.94

The Landlord is hereby ordered to return the balance of the Tenant's security deposit in the amount of \$147.94.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$147.94. The order must be served on the Landlord 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: November 03, 2009.

Dispute Resolution Officer