

Decision

Dispute Codes: MNR, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for unpaid rent, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on December 1, 2008. Rent in the amount of \$795.00 was payable in advance on the first day of each month. A security deposit of \$395.00 was collected on November 25, 2008.

By letter dated January 2, 2009, the tenant informed the landlord of his intent to vacate the unit at the end of January 2009. Subsequently, the parties do not dispute that the tenant actually vacated the unit on or about February 1, 2009. The landlord testified that the unit was not able to be re-rented until April 2009.

These same parties appeared at a hearing held on June 26, 2009, which was scheduled in response to an application by the tenant for a monetary order for the return of double his security deposit. By decision of the same date, a monetary order was issued in favour of the tenant in the total amount of \$840.60. This was comprised of return of double the security deposit, plus interest and recovery of the filing fee. In this current hearing the tenant testified that he has not yet either, received payment from the landlord, nor sought to enforce the monetary order by filing it in small claims court.

During the hearing the parties exchanged views on some of the circumstances surrounding both disputes and undertook to achieve a final resolution.

Analysis

Section 45 of the Act addresses **Tenant's notice** and provides in part, as follows:

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.

As the tenant's notice did not comply with the above statutory provisions, and the landlord was unable to mitigate his loss by re-renting the unit effective February 1, 2009, I find that the landlord has established entitlement to a monetary order in the amount of one month's rent of \$795.00. Further, as the landlord has succeeded in this application, I find that he is also entitled to recovery of the \$50.00 filing fee. I hereby therefore issue a monetary order in favour of the landlord for \$845.00.

Further to all of the above, section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a final resolution. Specifically, it was agreed as follows:

- that as the separate monetary orders issued in favour of each party pursuant to two separate hearings are similar in their value, the parties each agree that the entire dispute between them is now resolved, and that neither party will proceed to enforce their monetary orders by way of filing in the Small Claims Court.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$845.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

It is noted that the parties have each agreed not to enforce their respective monetary orders by way of filing in the Small Claims Court, and to consider that the entire dispute between them which arises out of this tenancy is now resolved.

DATE: December 17, 2009

Dispute Resolution Officer