

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or 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, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 7, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on December 12, 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 their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy agreement was effective July 1, 2009 and was set to switch to a month to month tenancy after June 30, 2010. Rent was payable in the amount of \$1,040.00 on the first of each month. No security deposit was paid by the Tenant however a \$50.00 key deposit was paid on July 1, 2009.

The Landlord testified that on July 28, 2009 the Tenant provided written notice to end the tenancy effective August 1, 2009 and the rental unit was re-rented as of August 1, 2009.

The Landlord referred to her documentary evidence which included, among other things, a copy of the tenancy agreement which in #5 provides for \$300.00 in liquidated damages, a written notice to end tenancy, a copy of a document signed by the Tenant on July 31, 2008 agreeing the \$300.00 liquidated damage charge is owed to the Landlord.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenant ended a fixed term tenancy in contravention of Section 45 and that the Tenant signed a document agreeing to the \$300.00 liquidated damage charges as provided for in #5 of the tenancy agreement. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve their claim for liquidated damages.

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 key deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

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|---|------------------|
| Liquidated damages | \$300.00 |
| Filing fee | 50.00 |
| Subtotal (Monetary Order in favor of the landlord) | \$350.00 |
| Less key Deposit of \$50.00 plus interest of \$0.00 | - 50.00 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$ 300.00 |

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$300.00**. The order must be served on the respondent and is enforceable through the Provincial Court and enforced 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: April 22, 2010.

Dispute Resolution Officer