



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for loss of income in lieu of notice to end tenancy pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72.

The notice of hearing dated November 13, 2008 was served on the tenant on November 16, 2008, by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Is the landlord entitled to a monetary order to recover the loss of income in the amount of one months rent in lieu of notice to end tenancy?
- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The landlord testified that the tenancy started on October 01, 2008 on a month to month basis. The monthly rent was set at \$1500.00 due in advance on the first day of each month. The tenant was required to pay 40% of the utility bill for the house. At the start of the tenancy, the tenant paid a security deposit in the amount of \$750.00 and a pet damage deposit of \$750.00.

The landlord submitted a copy of the signed tenancy agreement and stated that there is a clause in the tenancy agreement that states “*Should a tenancy terminate prior to a 12 month occupancy (for any reason), the tenant will be subject to a mandatory fee of \$400.00 to cover the costs associated with re- renting the premises*”

The landlord stated that the relationship between landlord and tenant deteriorated as a result of arguments between them, regarding the smell of cigarette smoke inside the landlord’s space which is located above the rental suite, in the upper level of the home. The landlord submitted into evidence copies of letters which formed the only means of communication between the landlord and tenant during the latter part of the tenancy. These letters demonstrated a hostile relationship between the landlord and the tenant and resulted in the tenant finally deciding to move out. The landlord agreed to end the tenancy but wanted a months notice. The tenant advised the landlord in writing on October 26, 2008 that the tenant would be moving out on October 31, 2008 and also provided the landlord with a forwarding address. The landlord stated that on November 01, 2008, the landlord advertised on Craig’s list and started showing the suite soon after. The suite was subsequently rented on December 01, 2008.

The landlord is claiming the following:

1.	Loss of income for November	\$1,500.00
2.	Fee for ending tenancy before 12 months	\$400.00
3.	Utilities for November	\$119.96
	Total	\$2019.96

Analysis

In regard to the applicant’s right to claim damages from the other party, Section 7 of the *Residential Tenancy Act* states that if a tenant does not comply with this Act, the regulations or the tenancy agreement, the non complying tenant must compensate the landlord for the resulting loss.

Section 52 states that a tenant may end a tenancy by giving the landlord notice to end the tenancy in writing and must be signed and dated by the tenant.

This notice given the day before rent is due in a given month, ends the tenancy at the end of the following month. In this case, I find that the tenant was noncompliant with the Act in that there was no written notice to end tenancy at least one month prior to vacating and effective on the day before the day rent is due resulting in a monetary loss for the landlord and therefore I find that the landlord has proven that the landlord is entitled to compensation of \$1500.00 in damages for the loss of income for the month of November.

Regarding the landlord's claim for a fee to end the tenancy prior to 12 months, I find that the tenancy was on a month to month basis and was not for a fixed term of 12 months. Hence this term does not apply to the tenancy and accordingly this portion of the landlord's claim is dismissed.

The tenant did not occupy the suite for the month of November and the landlord lived in the home for this month. Hence it is not possible to determine what, if any is the portion of the utility bill that the tenant is responsible for. Accordingly, the landlord's claim for utilities is dismissed.

Based on the undisputed sworn testimony of the landlord, I find that the landlord is entitled to loss of income in the amount of \$1500.00 due to the tenant's failure to give adequate notice to end tenancy. I also find that the landlord is entitled to the fee of \$50.00 to file this application. I order that the landlord retain the security deposit and interest of \$1506.15 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$43.85. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$43.85**.

Dated December 31, 2008.

Dispute Resolution Officer