

Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD O FF

Introduction

This hearing dealt with an application by the landlord to retain all of the security deposit in the amount of \$460 and for recovery of the filing fee of \$50 for making this application. Despite having been served with the application for dispute resolution and notice of hearing by registered mail and deem served in accordance with Section 89 of the Residential Tenancy Act the tenant did not participate in the conference call hearing, and has not applied for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The landlord provided testimony under solemn affirmation and the undisputed facts before me are as follows. The tenancy began on October 29, 2008 at which time the tenant and landlord entered into a fixed term tenancy agreement for a tenancy start date of November 1, 2008 and ending on August 31, 2009. The landlord collected a security deposit of \$460 in cash on October 29, 2008. On October 30, 2008 the tenant advised the landlord by telephone that she was cancelling the tenancy and would not be occupying the rental unit and desired her security deposit back. At that time, the landlord requested confirmation from the tenant, of the tenant's cancellation, via a signed notice in writing, and that she could fax it to the landlord. The tenant did not supply the landlord with any confirmation or forwarding address in writing, or otherwise,

until November 30, 2008, when she forwarded an e-mail to the landlord requesting the return of her security deposit. The landlord's testimony is that he did not simply ignore the tenant's telephoned notice of her change in plans and did in fact act on the information that the tenant was not going to occupy the rental unit as quickly as practically possible to mitigate any loss in revenue and re-advertised the rental unit it but was unable to find new tenants for November 1, 2008. He was able to rent it for the middle of November, 2008. On December 1, 2008 the landlord filed for dispute resolution to retain the security deposit of half a month's rent for loss of revenue.

Analysis

Section 16 of The Residential Tenancy Act addresses the start of rights and obligations under a tenancy agreement, specifically,

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord acted to mitigate losses but could not re-rent the rental unit by November 1, 2008 and incurred a revenue loss for at least one half month's rent. I also find the landlord made application for dispute resolution within the confines of Section 38 of the Residential Tenancy Act.

I find that the landlord has established a claim for **\$460** and is entitled to recovery of the **\$50** filing fee for a total claim of **\$510**. The landlord currently holds a security deposit of \$460.

Conclusion

I order the landlord retain the security deposit and interest in the amount of \$461.21 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$48.79**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 29, 2009