



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNR, MNSD, FF.

Introduction

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

- A monetary order pursuant to Section 67 for loss of income due to the tenant not giving appropriate notice to end tenancy;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the cost of the filing fee pursuant to Section 72.

Both parties attended the hearing and were 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 for loss of income for December, the filing fee and to retain the security deposit in partial satisfaction of this claim?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on February 01, 2008. The monthly rent was set at \$800.00 due in advance on the first day of each month. At the start of the tenancy, the tenant paid a security deposit in the amount of \$400.00. On November 10, 2008, the tenant gave the landlord a notice to end tenancy effective December 15, 2008. The tenant did not pay rent for December 2008 and moved out on December 15, 2008. The landlord testified that the tenant provided the landlord with a forwarding address at the end of December. The landlord advertised the availability of the rental unit on the internet and by putting out a lawn sign and found a tenant for January 2009.

The landlord is making a claim for loss of income for December and an order to retain the security deposit in partial satisfaction of this claim.

The tenant testified that the rental unit did not have adequate heat, had cracks in the ceiling, a leaky garage, no storage and had noisy neighbours. For these reasons, the tenant stated that the tenant could not continue the tenancy and was forced to leave without adequate notice. The tenant has submitted into evidence five letters of complaint written to the property manager at various times during the tenancy, regarding all the ongoing problems that the tenants had with regard to the rental unit.

Analysis

Section 45 of the *Residential Tenancy Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. In this case, the rent is payable on the first of each month. The tenant gave notice to end the tenancy on November 10, 2008 and as per Section 45, the effective date is December 31, 2008. The landlord made efforts to mitigate losses by advertising the availability of the suite, but was not successful in finding a tenant for the later half of December 2008.

Based upon the sworn testimony of both parties, I find that the landlord is entitled to \$800.00 for December 2008. I also find that the landlord is entitled to the filing fee of \$50.00. I order that the landlord retain the security deposit and interest of \$405.33 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 \$444.67. 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 **\$444.67**.

Dated February 10, 2009.

Dispute Resolution Officer