

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNR, MND, MNDC, 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 for rent for the month of January 2009 and a monetary order for the cost of repairs to the kitchen, 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.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord withdrew the portion of his application regarding his claim for the cost of repairs.

Issues to be decided

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 a monetary order to recover the filing fee and rent for the month of January 2009? Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The month-to-month tenancy started on August 01, 2007. Prior to moving in, the tenant paid a security deposit of \$825.00. The monthly rent was \$1630.00, due on the first day of each month.

On December 09, 2008, the tenant gave the landlord notice to end the tenancy effective January 10, 2009. The tenant moved out on December 28, 2008, paid \$525.00 which is a portion of rent for January 2009, and returned the keys to the landlord on January 10, 2009. The tenant gave the landlord his forwarding address in writing on January 15, 2009.

The landlord stated that the unit was vacant for the balance of January and the property was sold in February 2009. The landlord is claiming the balance of rent owed for the month of January, and the filing fee. The landlord has applied to retain the security deposit and accrued interest in partial satisfaction of his monetary claim.

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 that landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

The tenant is liable for rent for the entire month of January 2009. His notice to end the tenancy, which was given on December 9, 2008, was effective January 31, 2009 pursuant to the Act. Just because the tenant vacated the unit early and returned the keys by January 10, 2009, this does not mean that he is not responsible for rent for the entire month of January 2009. I also find that it was not possible for the landlord to re-rent the premises for the period of January 11-31, 2009 in these circumstances; and therefore the tenant is liable for this loss of revenue.

The tenant paid partial rent in the amount of \$525.00 and therefore I find that the landlord has established a claim for \$1105.00 for January 2009. I also find that the landlord is entitled to the filing fee of \$50.00 for a total of \$1155.00.

I order that the landlord retain the security deposit of \$825.00 and accrued interest of \$17.64 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 \$312.36.

Conclusion

I grant the landlord a monetary order in the amount of **\$312.36**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 27, 2009.

Dispute Resolution Officer