



# **Dispute Resolution Services**

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

## **Decision**

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

## **Introduction**

This hearing dealt with an application from the landlord for a monetary order in compensation for loss of rental income, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. Agents for both parties participated in the hearing and gave affirmed testimony.

## **Issue to be Decided**

- Whether the landlord is entitled to a monetary order under the Act

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on November 7, 2008. Rent in the amount of \$750.00 was payable in advance on the first day of each month, and a security deposit of \$375.00 was collected at the start of tenancy.

By way of the landlord's "Notice to Vacate" form, on or about January 18, 2009, the tenants informed the landlord of their intention to vacate the unit on January 19, 2009. The landlord's agent confirmed that the tenants actually retained possession of the unit until January 31, 2009, at which time a move-out condition inspection and report were completed.

The landlord's agent stated that the unit was able to be rented to new tenants effective from March 9, 2009. Accordingly, the landlord seeks a monetary order in compensation for loss of rental income for February 2009 and for the period of March 1 to 8, 2009.

## **Analysis**

Section 44 of the Act broadly addresses **How a tenancy ends**, and states in part:

44(1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 *[tenant's notice]*;

Section 45 of the Act speaks to **Tenant's notice**. In particular, section 45(1)(a)&(b) states:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that the tenants' notice to end tenancy failed to comply with the above statutory provisions. Further, I find that while the landlord made attempts to mitigate the loss of rental income by advertising the unit, it remained vacant all of February and up until March 9, 2009.

Pursuant to all of the above, I find that the tenants are liable for the landlord's loss of rental income for February. However, I find that the tenants are not liable for the landlord's loss of rental income for the period from March 1 to 8, 2009 since, in this

month-to-month tenancy, notice legally required of the tenants in order to terminate the tenancy is limited to one month.

As for the monetary order, I find that the landlord has established a claim of \$800.00. This is comprised of loss of rental income for the month of February 2009 and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$375.00 plus interest of \$00.85, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$424.15 (\$800.00 - \$375.85).

### **Conclusion**

I hereby grant the landlord a monetary order under section 67 of the Act for **\$424.15**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 20, 2009

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Dispute Resolution Officer