



# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** MNR, OPR, OPB, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, loss of income due to the tenant breaching the one year lease and to recover the filing fee.

The notice of hearing dated March 20, 2009 was served on the tenant on March 25, 2009, by registered mail. The landlord provided a tracking number which indicated that the tenant had received the notice of hearing. Despite having been served the notice of hearing, the tenant did not attend the hearing.

The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

At the start of the hearing the landlord advised me that the tenant had moved out on March 16, 2009 and therefore the landlord withdrew the portion of her application for an order of possession

### **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 rent and loss of income? Is the landlord entitled to the recovery of the fee to file this application?

### **Background and Evidence**

Based on the undisputed sworn testimony of the landlord, the facts are as follows:

The tenancy started on December 01, 2008 for a fixed term of one year ending on November 30, 2009. The monthly rent was \$1200.00 due in advance on the first day of each month.

The landlord testified that the tenant owed \$800.00 for February and failed to pay rent for March 2009. On March 04, 2009, the landlord served the tenant with a notice of her intent to sue for loss of rent for the remainder of the lease.

On March 06, 2009, the landlord served the tenant with a ten day notice to end tenancy. The tenant moved out on March 16, 2009 without paying the outstanding rent. The landlord was able to find a tenant for April 2009, for \$1,100.00 per month thus causing the landlord to incur a loss of \$100.00 per month.

The landlord is claiming the following:

1.	Unpaid rent for February 2009	\$800.00
2.	Unpaid rent for March 2009	\$1,200.00
3.	NSF fees	\$40.00
4.	Rent differential for the balance of the fixed term	\$800.00
5.	Filing fee	\$50.00
	Total	<b>\$2,890.00</b>

### **Analysis**

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenant owed \$800.00 for February 2009 and did not pay rent for March 2009. Therefore, I find that the landlord is entitled to rent owed in the amount of \$2,000.00.

*Residential Tenancy Policy Guideline 3* states that if a landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. In this case, the landlord advised the tenant of her intention to sue in a timely manner, via a letter on March 04, 2009.

The landlord mitigated her losses by finding a tenant for April 2009 at a rent of \$1,100.00 per month. The tenant ended the tenancy with eight months left on the lease, thereby causing the landlord to incur a loss of \$800.

I find that the landlord incurred a loss of income due to a violation of the terms of the Tenancy Agreement, on the part of the tenant and is therefore entitled to be awarded an amount sufficient to put her in the same position as if the tenant had not breached the agreement. Accordingly I find that the landlord is entitled to \$800.00.

I also find that the landlord is entitled to \$40.00 for NSF charges. The landlord has proven her case and is therefore entitled to recover the cost of filing this application.

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$2,890.00. 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 **\$2,890.00**

Dated May 13, 2009.

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Dispute Resolution Officer