

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, MNR, MND, 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 and liquidated damages due to an early end to a fixed term tenancy, pursuant to section 67;
- An order to retain the security deposit pursuant to section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to section 72.

The landlord applied for dispute resolution on March 12, 2009 and served the notice of hearing on the tenant by registered mail, to the address that the tenant had given the landlord in writing. Section 12 of the *Residential Tenancy Policy Guideline* states that documents may be served by a landlord to a tenant by registered mail at the forwarding address provided by the tenant. The registered package was returned to the landlord marked “refused”.

I find that service of the hearing document, by the landlord to the tenant, was done in accordance with section 88 of the *Residential Tenancy Act*. 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.

Issues to be decided

Is the landlord entitled to a monetary order for compensation for loss under the *Act* and to recover the filing fee? Is the landlord entitled to retain the security deposit in partial satisfaction of his monetary claim?

Background and Evidence

The tenancy started on October 01, 2008 for a fixed term of 12 months. The monthly rent was \$400.00 due on the first of each month. The tenant paid a security deposit of \$200.00 on September 30, 2008.

A clause in the tenancy agreement with regard to liquidated damages states that if the tenancy is terminated before the date specified in the tenancy agreement, then the landlord shall charge and the tenant agrees to pay the sum of \$118.00 which consists of a pre-estimated administrative cost for re-renting the unit.

The tenant failed to pay rent for March and on March 02, 2009; the landlord served the tenant in person, with a ten day notice to end tenancy. Upon receipt of the notice to end tenancy, the tenant moved out and left the landlord a note with his forwarding address. The landlord was able to find a tenant for the month of April.

The landlord is claiming the following costs:

1.	Rent for March	\$400.00
2.	Cost to re rent the unit	\$118.00
3.	Filing fee	\$50.00
	Total	\$568.00

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 did not pay rent for March 2009. Therefore, I find that the landlord is entitled to rent for March in the amount of \$400.00.

Residential tenancy Policy Guideline #4 states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance, the damages payable in the event of a breach of the tenancy agreement.

In this particular case, I find that the tenant breached the tenancy agreement by not paying rent for March and thereby ending the fixed term tenancy prior to end of the term. The landlord mitigated his losses by finding a tenant for the following month.

I find that the landlord is entitled to be awarded an amount sufficient to put him in the same position as if the tenant had not breached the agreement. Accordingly, I find that the landlord is entitled to costs to find a new tenant, in the amount of \$118.00.

I find that the landlord has established a claim for rent for March and the cost to re-rent the unit for a total of \$518.00. Since the landlord has proven his case, he is also entitled to the recover of his filing fee in the amount of \$50.00.

I order that the landlord retain the security deposit of \$200.00 and interest of \$0.76 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 \$367.24. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order under Section 67 of the *Residential Tenancy Act*, in the amount of **\$367.24**.

Dated June 09, 2009.

Dispute Resolution Officer