

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNR, 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 utilities, loss of income for the months of March April, May and June 2009 and for the cost of repairs, pursuant to Section 67;
- An order to retain the security deposit 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.

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 loss of income, utilities and the filing fee? Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The tenancy started on September 15, 2008 for a fixed term of 12 months. Prior to moving in, the tenant paid a security deposit of \$675.00. The monthly rent was \$1350.00 due on the first day of each month. The tenant was required to pay one half of the utility bills.

The landlord testified that on February 01, 2009, the tenant gave the landlord notice to end the tenancy effective February 28, 2009. The tenant participated in a move out inspection and agreed that she was responsible for some of the damage that the landlord is claiming.

The landlord stated that as soon as she received the notice to end tenancy, she put up signs to find a new tenant. In addition the landlord advertised the vacancy on two internet sites.

The landlord stated that despite dropping the rent by \$200.00 per month, she has not had any success with finding a tenant and the suite is currently unoccupied. The landlord is claiming a loss of income for four months of vacancy, utilities, cleaning, repairs and painting for a total of \$6,654.00. However, the landlord amended her application to claim a total of \$5,000.00. The landlord has applied to retain the security deposit and accrued interest in partial satisfaction of her monetary claim.

The tenant testified that for financial reasons, she could no longer afford to pay \$1350.00 for rent and therefore gave the landlord notice to end the tenancy. The tenant confirmed that the landlord put up signs to advertise the availability of the suite and that four prospective tenants came by to view the suite prior to the tenant moving out. The tenant agreed that she owed the landlord \$334.00 for utilities and \$300.00 for cleaning. The tenant did not agree that she owed rent for the balance of the lease.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it

stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant ended the fixed term tenancy prior to the date specified in the tenancy agreement, thereby breaching a term of the tenancy agreement which resulted in a loss of rental income to the landlord. I also find that the landlord took steps to mitigate her losses by putting up signs, by advertising on the internet and by showing the unit to prospective tenants.

Accordingly, I find that the landlord's monetary claim satisfies all components of the above test and therefore the landlord is entitled to loss of rental income for the months of March to June 2009, in the amount of \$5,400.00. In addition, the tenant did not dispute the landlord's claim for \$334.00 for utilities and \$300.00 for cleaning. Therefore the landlord has established a claim for a total of \$6034.00.

The landlord has capped her claim at \$5,000.00 and since the landlord has proven her case, I find that she is also entitled to the recovery of the filing fee of \$50.00.

I order that the landlord retain the security deposit of \$675.00 and accrued interest of \$2.99 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 \$4372.01

Conclusion

I grant the landlord a monetary order in the amount of **\$4372.01**. This order may be filed in the Small Claims Court and enforced as an order

Dated June 10, 2009.

Dispute Resolution Officer