

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order to retain the security deposit and to recover the filing fee. 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 for the month of March 2009? Did the landlord make adequate attempts to mitigate losses? Is the landlord entitled to retain the security deposit in satisfaction of this claim? Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

On February 17, 2009 the landlord and tenant entered into a tenancy agreement. The month to month tenancy would start on March 01, 2009 and the monthly rent was \$1,100.00 payable on the first of each month. The tenant paid a security deposit of \$550.00.

On February 27, 2009, the tenant wrote a note to the landlord stating that she would not be moving in and requested that the security deposit be mailed to the forwarding address, as provided in the note.

The landlord was unable to rent the unit for the month of March and applied to retain the security deposit in satisfaction of the loss of income incurred by the landlord, as a result of the breakdown of the tenancy agreement.

Analysis

Section 16 of the *Residential Tenancy Act*, states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy agreement was entered into on February 17, 2009 and therefore, effective that date, pursuant to section 45, the tenant was obliged to end the tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

In this case the tenant advised the landlord on February 27, 2009 of her intentions to end the tenancy and therefore the effective date of the end of tenancy was March 31, 2009. Accordingly, I find that the landlord is entitled to rental income for the month of March.

Since the landlord has applied to retain the security deposit towards this loss of income, I order that the landlord retain the security deposit. I also find that the landlord is entitled to the filing fee in the amount of \$50.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I order that the landlord retain the security deposit and I grant the landlord a monetary order in the amount of **\$50.00**.

Dated June 30, 2009.

Dispute Resolution Officer