

# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income for the months of April and May 2009 and to retain the security deposit in partial satisfaction of his claim. The landlord also applied for the recovery of the filing fee.

The notice of hearing dated June 01, 2009 was served on the tenant on June 02, 2009 by registered mail, to the forwarding address provided by the tenant. The landlord provided a tracking number. Despite having been served with the notice of hearing, the tenant did not attend the hearing. The landlord was represented at the hearing, by her agents who were given full opportunity to present evidence and make submissions.

The landlord made an application for dispute resolution in this matter on April 09, 2009 and it was heard on May 28, 2009. Due to issues with the rules of procedure, the dispute resolution officer dismissed the application with leave to re-apply. Since the landlord made the initial application on April 09, 2009, at this time, the landlord is still within the specified time lines to apply to retain the security deposit.

### **Issues to be decided**

The tenant ended the fixed term tenancy two months prior to the end date, as specified in the written tenancy agreement. The tenant moved out on April 01, 2009 without giving the landlord notice to end the tenancy.

Is the landlord entitled to a monetary order for loss of income for April and May 2009?

Is the landlord entitled to the recovery of the filing fee and to retain the security deposit in partial satisfaction of this claim?

### **Background and Evidence**

The landlord testified that the tenancy started on December 01, 2008 for a fixed term ending May 31, 2009. The monthly rent was \$1395.00 payable on the first day of each month. On November 20, 2008, the tenant paid a security deposit of \$700.00.

The landlord testified that in early January 2009, the owner of the rental unit inquired whether the tenant would be interested in ending the tenancy, at an earlier date. The tenant responded saying she did not mind doing so. By the time the landlord made contact with the owner, she had already made other arrangements.

The landlord emailed the tenant on January 14, 2009 to advise her that the owner was no longer interested in ending the tenancy prior to the end date of May 31, 2009. The landlord filed a copy of the email into evidence. The landlord stated that he did not hear back from the tenant until April 01, 2009 when she called to inform the landlord that she had moved out.

The landlord made efforts to re-rent the unit by advertising the vacancy on the company's website and two other websites. The landlord stated that the rental unit is a resort type accommodation and is rented long term from Fall to May 31, each season. After May 31, the unit is rented for short terms, sometimes even for a single night. The landlord stated that despite his efforts, he was unable to find a tenant for a term of only two months and therefore the unit was not rented for April or May 2009.

The landlord is claiming rent for two months and the filing fee of \$50.00 for a total of \$2840.00

### **Analysis**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term 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,
- b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

- c) is the day before the day in the month, that rent is payable under the tenancy agreement.

The fixed term tenancy was due to end on May 31, 2009. The tenant moved out on April 01, 2009 without giving the landlord any notice to end the tenancy. The landlord attempted to mitigate his losses by advertising the unit, but was not successful in finding a tenant for the months of April and May. Therefore the landlord suffered a loss of income and I find that the tenant must compensate the landlord for this loss.

I find that the landlord has established a claim for rent for the months of April and May 2009 in the amount of \$2,790.00. The landlord is also entitled to filing fee of \$50.00. I order that the landlord retain the security deposit of \$700.00 and interest of \$1.20 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 \$2,138.80. 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 **\$2,138.80**

Dated July 14, 2009.

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Dispute Resolution Officer