



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 was convened in response to an application by the landlord for unpaid rent and loss of revenue pursuant to a fixed term tenancy agreement ending July 31, 2009, to keep the security deposit, and to recover the filing fee for this application.

Issues to Be Decided

- Should the landlord be awarded loss of rent and/or rental income?
- Is the landlord entitled to retain the deposit in partial satisfaction of such amount?

Background and Evidence

The tenant and a previous landlord at the same property had a fixed term tenancy which went from September 15, 2008 to December 31, 2008.

The current tenancy began on February 01, 2009. Rent is in the amount of \$1600 per month payable in advance on the first of the month. The current tenancy was agreed to be for a fixed term, ending July 31, 2009. A security deposit of \$800 was paid at the outset of the previous tenancy and then applied to this tenancy. The landlord submitted a copy of the tenancy agreement.

The tenant vacated the rental unit on April 15, 2009. The landlord claims the tenant failed to pay rent for April 2009, as her rent cheque was returned NSF. The landlord submitted a copy of the rent cheque for April 2009 – marked NSF.

The landlord's testimony is that he advised the tenant of her responsibility to the fixed

term tenancy agreement to the end of July 2009, but the landlord claims the tenant seemed to not appreciate the inherent issues or possible implications. The landlord submitted evidence showing efforts to re-rent the suite and indeed managing to mitigate loss of revenue for a total of one month during the period of the fixed term. The landlord has also been able to re-rent the suite for the last month of the fixed term, although at less rent of \$1250 per month than the tenant's fixed term rent of \$1600. The landlord's total claim on application is for rent and loss of revenue - minus mitigation of losses from rental income to the end of the fixed term - in the amount of \$3557.

The tenant's agent (the tenant) questioned the existence of the fixed term tenancy agreement upon which the landlord relies in the advancement of his application. The tenant claims there is no such tenancy agreement in existence with the applicant landlord, which is the reason, the tenant claims she has not received such a document as claimed and relied upon by the landlord. The landlord testified he sent the tenant a copy of the agreement in question along with all the other evidence, by registered mail, along with the Notice for Dispute Resolution, and has no explanation as to why the tenant claims otherwise. In the hearing I stated I would allow the document into evidence to facilitate the advancement of the hearing and upon reflection I would bring finality to this issue in my decision.

Analysis

I prefer the landlord's evidence and find the landlord and tenant have a fixed term tenancy agreement ending July 31, 2009, as submitted by the landlord.

The tenant breached the terms of the fixed term tenancy by vacating earlier than permitted. As a result the landlord has lost rental revenue in the total of **\$3550** for the period to the end of the fixed term of the tenancy agreement. I also award recovery of an NSF fee of **\$7** and I grant the landlord recovery of the **\$50** filing fee for this application. The quantum of the landlord's entitlement is **\$3607**.

Pursuant to section 38(4) of the Residential Tenancy Act I order the landlord is entitled to retain the security deposit and accrued interest in partial satisfaction of the sum awarded.

Conclusion

The landlord is entitled to an award of \$3607. The security deposit including accrued interest to the date of this hearing is in the total of \$803.54. I order, pursuant to section 38(4)(b) that the full amount of the security deposit be retained in partial satisfaction of the monetary award noted above. I grant the landlord a monetary order for the remaining balance of the award in the amount of **\$2,803.46** to be paid immediately to the landlord by the tenant. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 27, 2009.