

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

This hearing dealt with an application by the landlords for an order of possession and a monetary order for unpaid rent, outstanding utility charges, loss of income and bank charges.

During the hearing, the landlords withdrew their application for an order of possession and a monetary order for the bank charges.

On June 21, 2008, the landlords collected a security deposit from the tenants in the amount of \$2200.00. The tenancy began on July 30, 2008 for a fixed term ending July 29, 2010. Rent in the amount of \$2200.00 was payable in advance on the 30th day of each month. On April 10, 2009, the landlords served the tenants with a notice of rent increase stating that the monthly rent will be increased to \$2281.00 effective July 30, 2009. On May 1, 2009, the landlords returned \$1100.00 of the security deposit to the tenants by a rent reduction of the May rent. The tenants failed to pay rent in the month of July, 2009 and on July 3, the landlords served the tenants with a notice to end tenancy for non-payment of rent. On July 17, the landlords found the tenants to have moved out.

The tenants agreed that they have not paid the July rent of \$2200.00 and the outstanding utility charges of \$138.22. Based on the above, I find that the landlords are entitled to recovery of the July rent of \$2200.00 and outstanding utility charges of \$138.22 and I allow a claim for these two amounts.

The landlords are seeking to include a claim for loss of income of \$2281.00 for each of the months of August and September. The landlords gave the following testimony regarding their claim. On July 17, 2009, the tenants moved out without giving the required notice to end tenancy. On July 24, 2009, the landlords placed an ad in a newspaper to re-rent the unit but to this day, they have not been able

to re-rent the unit. To support their claim, the landlords submitted an invoice from the World Journal dated July 24, 2009. The tenants maintained that the landlords had told them that they could move out anytime without any financial obligation but the landlords refused to provide a written confirmation of the above. Therefore, they thought that they could end the tenancy any time without providing any notice.

I find insufficient evidence to indicate that the parties had mutually agreed to end tenancy on a specific date. Accordingly, I find that there was no mutual agreement to end tenancy between the landlords and tenants. 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 is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case, the tenancy was for a fixed term ending July 29, 2010 and the tenants ended tenancy on July 17, 2009. I am also satisfied that the landlords have exercised reasonable efforts to mitigate their losses by advertising in the newspaper to re-rent the unit. I therefore find that the landlords have established a claim for loss of income of \$2281.00 for the month of August. As for the landlords' claim for loss of income for the month of September, I find reasonable to allow a claim for ½ month rent in the amount of \$1140.50.

Based on the above, I find that the landlords have established a claim for \$2200.00 in unpaid rent, \$138.22 in outstanding utility charges and \$3421.50 in loss of income. The landlords are also entitled to recovery of the \$100.00 filing fee. I order that the landlords retain the security deposit and interest of \$1117.49 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$4742.23. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 09, 2009.