

# 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 unpaid rent, loss of income and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The notice of hearing dated June 10, 2009 was served on the tenant on June 17, 2009 by registered mail. The landlord provided a tracking number. The landlord also served the tenant in person at his work place. Despite having been served with the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent, loss of income and the filing fee? Did the landlord make reasonable efforts to mitigate his losses? Is the landlord entitled to retain the security deposit in partial satisfaction of his claim?

### **Background and Evidence**

The tenancy began on August 01, 2007. The monthly rent was \$728.00 due on the first day of the month. The tenant paid a security deposit of \$350.00.

The landlord stated that the tenant was generally late on rent and did not pay rent for February, March and April. On May 15, 2009, during a routine visit, the landlord found out that the tenant had moved out on April 30, 2009. The landlord advertised the availability on the internet and in the local newspaper and found a tenant for August.

The landlord filed copies of the advertisements. The landlord has applied for a monetary order for unpaid rent for February, March and April 2009, loss of income for May, June and July 2009 and the filing fee.

### **Analysis**

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenant did not pay rent for February, March and April 2009 and moved out on April 30, 2009, without notice. The landlord made efforts to mitigate his losses but was not able to find a tenant for May, June or July, 2009.

*Residential Tenancy Policy Guideline #3* states that in a month to month tenancy, if the tenancy is ended without notice, the landlord may be awarded damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The landlord found out that the tenant had moved out, on May 15, 2009. Given this date as the tenant's date of notice to end tenancy, the tenant could legally end the tenancy on June 30, 2009. Since the landlord made efforts to mitigate his losses without success, I find that the landlord is entitled to loss of income for May and June.

Overall, I find the landlord has established a claim for rent for February, March and April, 2009 (\$2184.00) and loss of income for May and June 2009 (\$1456.00). Since the landlord has proven his case, he is also entitled to filing fee of \$50.00.

I order that the landlord retain the security deposit of \$350.00 and accrued interest of \$6.88 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 \$3333.12. 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 **\$3333.12**.

Dated September 21, 2009.

---

Dispute Resolution Officer