

## **DECISION**

Dispute Codes MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

In early May of 2009, the Landlord placed an advertisement for rental of the subject rental unit. The Tenant came to view the rental unit and wanted the Landlord to rent it to her.

The Tenant visited the rental unit on several occasions to take measurements and discuss details of the tenancy with the Landlord.

On May 8, 2009, the Tenant paid the Landlord a security deposit of \$462.50, which represented half of one month rent payment of \$925.00.

The tenancy was agreed to start on July 1, 2009. The Tenant and Landlord discussed an early move in, for around the end of June 2009. The Landlord provided the keys to the Tenant. They were to sign the tenancy agreement on the first day of the tenancy.

On June 30, 2009, the Tenant informed the Landlord she would not be renting the unit, as she had found a less expensive, more suitable rental unit.

The Landlord began advertising the rental unit on or about July 10, 2009. The Landlord found a different occupant, who took possession of the rental unit on August 1, 2009.

The Landlord is now claiming against the Tenant for \$2,442.50, comprised of July and August rent of \$1,850.00, \$60.00 for the cost of advertising, \$20.00 for a mortgage payment penalty, and the \$50.00 filing fee.

### Analysis

Based on the testimony, evidence and a balance of probabilities, I find that the Tenant has breached the Act by breaching a contract with the Landlord, and the Landlord has suffered a monetary loss due to the breach.

The Tenant and the Landlord had an oral contract to rent the unit. There was an offer, an acceptance and consideration exchanged, which form the basics of a contract.

Following the breach of the contract by the Tenant, the Landlord was required to mitigate her losses. I find the Landlord did this by having the unit re-rented for August 1, 2009. I find the Landlord suffered a loss of rent for one month, had to incur advertising costs, and is entitled to recover the filing fee. I deny the Landlord's claim for August rent, as the unit had been re-rented for this month. I deny the Landlord's claim for \$20.00 for a mortgage penalty, as this amount is not recoverable under the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$1,035.00** comprised of \$925.00 for one month of rent, \$60.00 in advertising costs and the \$50.00 fee paid for this application.

I order that the Landlord keep the security deposit of **\$462.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$572.50**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 29, 2009.

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Dispute Resolution Officer