



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute codes**

MNSD MNDC

### **Introduction**

This hearing was convened in response to an orally amended application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to retain all or part of the security deposit in satisfaction of the monetary claim.

Both parties were represented in the conference call hearing and each provided testimony and submissions to this process.

### **Issue() to be determined**

Is the landlord entitled to the monetary amount claimed ?

### **Background and Evidence**

This tenancy began September 01, 2007 and ended ended June 30, 2009. At the outset of the tenancy the landlord collected a security deposit in the amount of \$447.50.

On June 19, 2009 the tenant gave the landlord written notice to vacate with an effective date of June 30, 2009. The notice was provided into evidence. As the tenant gave late notice contrary to the Residential Tenancy Act, the landlord contends that in order to mitigate rental revenue losses for the following month the landlord had to spend unusual and additional time and financial resources in seeking a new suitable tenant. The landlord provides an invoice from the building manager for time spent to advertise, screen, interview and show prospective tenants – beyond the typical time and resources for this function. The landlord's invoice is for \$400, minus the standard rental fee of \$100 on turn-over, as is usually allocated. The landlord was successful in securing a tenant for July 1<sup>st</sup>, 2009. As a result, the landlord testified it was possible for them to

avert revenue losses for the month of July, for which they would have otherwise sought compensation from the tenant in the amount of one month's rent.

The tenant disputes the amount claimed as excessive, especially given his tenancy history as a good tenant – undisputed by the landlord.

### **Analysis**

Section 7 of the Act provides as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, it certainly appears, on preponderance of the evidence, that the landlord made reasonable efforts to minimize their losses thereby meeting the second part of the test established in section 7(2). I find the tenant has benefited from the landlord's mitigation of this matter, and I grant the landlord recovery of their costs to re-rent the suite under short notice. The landlord is entitled to retain the amount of **\$300** from the tenant's security deposit.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will

order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been granted it is appropriate that I order the return of the balance of the tenant's security deposit with interest.

### **Conclusion**

The landlord may retain **\$300** from the tenant's Security deposit, and must forward the balance to the tenant, forthwith.

**I order** and the tenant is being given a Monetary Order in the amount of **\$156.49**. If necessary, this order may be registered in the Small Claims Court and enforced as an order of that court.

Dated November 03, 2009.