

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 to recover rent, loss of income, and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income due to a violation of the tenancy agreement on the part of the tenant? Did the landlord make efforts to mitigate his losses? Is the landlord entitled to retain the security deposit?

Background and Evidence

The fixed term tenancy started on February 07, 2009 and was due to end on February 28, 2010. The rent was \$1,300.00 due in advance on the first day of each month. The tenant paid a security deposit in the amount of \$650.00.

The tenant failed to pay rent for July and on July 07, 2009; the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant moved out on July 16, 2009 without informing the landlord.

The landlord stated that the tenant was in a fixed term tenancy and breached the contract by ending the tenancy prior to end date. The landlord advertised the availability of the unit and found a tenant at a lower rent of \$1,000.00 per month, for October 15, 2009. The landlord is claiming rent for July 2009 and loss of income for the balance of the term.

The tenant stated that he was not in a fixed term tenancy and the tenancy agreement filed by the landlord was not the one that he had signed. The tenant referred to a copy of a rent cheque that the landlord had filed.

The tenant requested that I compare the signatures. The landlord agreed that there were some differences in the signatures, but stated that since his son had entered into the tenancy agreement with the tenant, he was unable to comment on the validity of the tenant's signature on the agreement.

During the hearing the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute. Specifically:

- The landlord agreed to accept \$850.00 plus the security deposit in full and final settlement of his claim.
- The tenant agreed to allow the landlord to retain the security deposit and to pay the landlord \$850.00 towards his claim.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. As this dispute was resolved by mutual agreement and not based on the merits of the case, I decline the landlord's request to recover the filing fee paid for this application

Conclusion

I order that the landlord retain the security deposit of 650.00 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 **\$850.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 17, 2009.

Dispute Resolution Officer