

## **Decision**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to either or both of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from February 1, 2009 to January 31, 2010. Rent in the amount of \$1,525.00 was payable in advance on the first day of each month. No security deposit was collected.

By letter dated September 30, 2009, the tenant(s) gave notice to end the tenancy effective October 30, 2009. Subsequently, the tenant(s) made the unit available to the landlord on October 13, 2009. Rent was paid to the end of October 2009.

A new renter was found effective December 1, 2009. The residential tenancy agreement provides for a month-to-month tenancy with monthly rent of \$1,350.00.

The landlord seeks compensation for loss of rental income for the month of November 2009 in the amount of \$1,525.00.

Further, the landlord seeks compensation for the combined difference of \$350.00 in monthly rental income between the 2 tenancy agreements, for each of the months of December 2009 and January 2010  $[(\$1,525.00 - \$1,350.00) \times 2 = \$350.00]$ .

The landlord's agent gave affirmed testimony that advertising for new renters in this unit was undertaken by the landlord on kijiji on October 8, 2009, on craigslist on October 12, 24 & 31, and again on kijiji on November 10, 2009. 2 separate advertisements were also placed in the newspaper for 3 days starting November 11, 2009 (\$34.60) and for 4 days starting November 28, 2009 (\$64.52).

The landlord also seeks to recover the \$50.00 filing fee.

### **Analysis**

Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part as follows:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

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The damages awarded are 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.

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In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Based on the documentary evidence and testimony of the parties, I find that the landlord began advertising for new renters in a timely fashion after being given notice by the tenant(s). Accordingly, I find that the landlord has established entitlement to loss of rental income for November 2009 in the amount of \$1,525.00.

Arising from the difference in rent pursuant to the 2 residential tenancy agreements, I further find that the landlord has established entitlement to \$350.00, which represents the \$175.00 shortfall in rent for each of December 2009 and January 2010.

I also find the landlord has established entitlement to recovery of newspaper advertising costs of \$99.12 (\$34.60 + \$64.52).

Finally, as the landlord has succeeded in this application, I find that the landlord is entitled to recover the \$50.00 filing fee.

In summary, I find that the landlord has established a claim of \$2,024.12. This is comprised of \$1,525.00 in loss of rental income for November 2009, \$350.00 in combined differential rent between the 2 tenancy agreements for 2 months, \$99.12 for newspaper advertising, in addition to the \$50.00 filing fee.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$2,024.12**. This order may be served on the tenant(s), filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 16, 2010

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Dispute Resolution Officer