

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her agent. The tenant did not attend.

The landlord confirmed that notice of the hearing and evidence was provided to the tenant via registered mail and that she had confirmed using her tracking number that the tenant had signed acknowledging receipt of the registered mail.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and lost revenue due to the tenant ending the fixed term tenancy early; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement and addendum signed by the parties on August 26, 2009 for a one year fixed term tenancy beginning September 1, 2009 for a monthly rent of \$600.00 due on the 1<sup>st</sup> of the month and security deposit was paid on August 26, 2009; and
- A copy of a tenancy agreement signed by the landlord with different tenants on January 4, 2010 for a new tenancy at this address beginning on February 1, 2010.

The landlord testified that the tenant contacted her on or about October 7, 2009 stating that he was moving out of the rental unit because he had found a better deal. The tenant vacated the rental unit on October 7, 2009.

The landlord testified that she had advertised the rental in the local paper from the day the tenant moved out and showed the unit to only a few potential tenants. The landlord re-rented the rental unit effective February 1, 2010.

The landlord is claiming lost rent for the months of November 2009, December 2009, and January 1, 2010.

### Analysis

Section 45 allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is:

1. Not earlier than one month after the date the landlord receives the notice;
2. Not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
3. The day before the day in the month, that rent is payable.

This section does allow if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the section within a reasonable period after the tenant gives written notice of the failure the tenant may end the tenancy after the landlord receives the notice. I find the tenant was not compliant with the *Act*, in ending the tenancy prior to the end date of the fixed term.

Section 7 of the *Act* states that if a landlord claims compensation for damage or loss that results from the tenant's non-compliance with the *Act* or tenancy agreement, they must do whatever is reasonable to minimize the damage or loss. I am satisfied that the landlord took reasonable steps to mitigate her losses.

### Conclusion

For the reasons noted above, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,850.00** comprised of \$1,800.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,550.00**. This order must be served on the tenant and 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: March 12, 2010.

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Dispute Resolution Officer