

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit, an Order for money owed or compensation for damage or loss under the *Act* and to recover the cost of the filing fee. At the outset of the hearing the landlord states that the tenant has abandoned the rental unit and the landlord withdraws his application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 18, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on February 23, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a monetary Order to recover unpaid rent of \$675.00?
- Is the landlord entitled to a Monetary Order to recover loss of income of \$675.00?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

This month to month tenancy started on October 01, 2008. Rent for this unit was \$675.00 per month which was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$325.00 on October 03, 2008.

The landlord testifies that the tenant did not pay his rent for February 2010. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on February 03, 2010. The landlord claims the tenant abandoned the rental unit on or about February 28, 2010. The landlord went to the unit to find the tenant and saw no signs of life. The landlord posted a Notice to enter the rental unit on March 01, 2010. When the landlord entered the unit the next day he found the tenant had abandoned the unit and removed his belongings. The landlord also found the tenant had painted the bedroom and living room walls in a dark blue paint which he has had to repaint. He was unable to re-rent the unit for March, 2010.

The landlord states that the tenant did not pay the outstanding rent for February and did not give the landlord any notice that he was leaving the rental unit. The landlord therefore seeks to recover the unpaid rent of \$675.00 and a loss of rental income for March, 2010 of \$675.00.

The landlord requests to keep the tenants security deposit to offset against the unpaid rent and to recover the filing fee he paid for this application.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for February, 2010 of **\$675.00** pursuant to section 67 of the *Act*.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. Under section 45 of the *Act*, a tenant of a month-to-month tenancy must give one clear months notice. Consequently, the earliest the tenants could have ended the tenancy would have been March 31, 2010. As a result, the landlords are entitled to recover a loss of rental income for March, 2010 of **\$675.00** pursuant to section 67 of the *Act*.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$325.00 and accrued interest of \$1.20 in partial payment of the rent arrears. As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for February, 2010	\$675.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$326.20)
<b>Total amount due to the landlord</b>	<b>\$1,073.80</b>

#### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,073.80**. The order must be served on the respondent and is enforceable through the Provincial Court 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 22, 2010.

---

Dispute Resolution Officer