

## DECISION

Dispute Codes      MNDC, MNSD, 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. The tenants did not attend.

The landlord provided testimony and documentary evidence that hearing notice and evidence had been forwarded to the tenant via registered mail but that it had been returned, indicating the addressee was not at that address.

The landlord testified that the tenant had approached them in December 2009 to have their security deposit returned and at that time provided the landlord with a forwarding address.

I am satisfied the landlord has adequately served the tenants at the forwarding address provided by the tenants in compliance with Section 89 of the *Residential Tenancy Act (Act)*.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue resulting from a breach of the tenancy agreement; 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, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement and addendum signed by both parties on October 22, 2009 for a 1 year and 7 month fixed term tenancy beginning on December 1, 2009 for a monthly rent of \$2,550.00 due on the 1<sup>st</sup> of the month and security deposit of \$1,275.00 was paid; and

- Email correspondence between the tenant and the landlord's agent and from the agent to the landlord regarding the tenants notice dated November 18, 2009 that they would not be moving into the rental unit.

The landlord testified that her agent began advertising the rental unit's availability on November 18, 2009 in a local newspaper, as the tenant had previously indicated there may be an issue with them moving into the rental. As a result of this advertising the landlord was able to rent out the property effective January 1, 2010.

The landlord's financial claim is for rent for the month of December 2010 in the amount of \$2,550.00 and for an agent's commission fee in the amount of \$1,200.00 and to retain the security deposit.

### Analysis

In accordance with Section 16 of the *Act* the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date, among other things, that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. I find the tenant's failed to comply with this Section when they provided notice to the landlord that they were not moving in to the rental unit.

I am satisfied that as a result of the breach of the *Act* the landlord incurred additional costs to re-rent the rental unit in the amount of \$1,200.00 for agent fees. In compliance with Section 17 of the tenancy agreement addendum signed by the parties the tenant is responsible for the expenses of renting the property again.

I also find that the landlord took all reasonable steps to mitigate any loss as a result of the tenant's breach of Section 45, in compliance with Section 7 of the *Act*.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,850.00** comprised of \$2,550.00 rent owed; \$1,200.00 liquidated damages and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,275.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2575.00**. 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: April 22, 2010.

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Dispute Resolution Officer