

## **DECISION**

Dispute Codes            MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the Act, and was sent to each tenant by registered mail on March 10, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed for a loss of revenue, administrative fees and travel costs?
- Is the landlord entitled to keep the security and pet damage deposits?

### Background and Evidence

Both Parties agree that this month to month tenancy started on September 17, 2009. Rent for this unit was \$900.00 per month and was due on the first of each month. The tenants paid a security deposit of \$450.00 and a pet damage deposit of \$250.00 on September 17, 2009. The tenancy agreement was a verbal agreement between the Parties.

The landlord testifies that the tenants gave him written notice to end tenancy on December 01, 2009. The landlord states that he informed the tenants that they had not given proper notice to end the tenancy for December 31, 2009 and that the tenants must give the landlords one clear

months notice or the tenants would be responsible for rent for January, 2010. The landlord states that he also told the tenants if he could re-rent the unit by the 15<sup>th</sup> of the month or if they found someone to rent the unit they would be released from their obligation to pay rent for January, 2010. The landlord has provided a copy of the tenants notice to end tenancy which states they wish to end the rental agreement effective December 31, 2009.

The landlord states he received the tenants forwarding address on March 03, 2010. The landlord states that he was on holiday at that time and had to pay another person to file the application as he was aware he only had 15 days from receiving the tenants forwarding address to file his application. These administrative costs were \$50.00 and \$7.80 for travel costs.

The landlord testifies that he attempted to re-rent the unit. He put an advertisement in the paper and a sign outside the building to show a unit was for rent. The unit was re-rented for February 01, 2010.

The tenants testify that they wanted to give written notice to end the tenancy on November 30, 2009 however the building manager was not around that evening to accept the notice. The tenants waited until December 01, 2009 as they were not aware that they must give notice to end tenancy on the day before the day that rent is due.

The tenants claim the landlord did not attempt to mitigate his loss of rent for January, 2010. The tenants claim they spoke to the building manager about the sign to rent not being put out at the front of the building and it was eventually put out on the third week in December, 2009.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. I refer to section 45 of the act regarding a tenants notice to end tenancy which states:

#### **Tenant's notice**

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenants did not give notice to end the tenancy until December 01, 2009. Therefore the earliest the tenants could have legally ended the tenancy would have been January 31, 2010.

However section 7(2) of the Act states:

a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenants argue that the landlord did not make attempts to re-rent the unit until the third week of December, 2009, the landlord argues that he did place an advert in the paper and put a sign outside the building. When a landlord's evidence is contradicted by a tenant then the burden of proof falls on the claimant to provide additional cooperating evidence to support his claim. In this instance the landlord has not provided any evidence to support his claim that he attempted to mitigate his loss by taking steps to re-rent the unit from December 01, 2009 when he first received the tenants notice. Consequently, I find the landlord has not complied with section 7(2) of the Act and I dismiss his application to recover a loss of revenue for January, 2010.

The landlord has applied to recover the administrative costs and travel costs associated with filing his application. I find it is not the fault of the tenants that the landlord was on holiday when he received their forwarding address in writing and therefore the tenants should not be liable for the landlords costs incurred in filing his application.

As the landlord has been unsuccessful with his application to keep the tenants security and pet damage deposits I order the landlord to return these deposits to the tenants within seven days of receiving this decision.

As the landlord has been unsuccessful with his claim I find he must bear the cost of filing his own application.

### Conclusion

The landlords' application is dismissed in its entirety, without leave to reapply.

I Order the landlord to return the tenants security and pet damage deposits of \$700.00 within seven days of receiving this decision

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: May 05, 2010.

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Dispute Resolution Officer