



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MNSD

### Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent due to the tenant's ending of the fixed term agreement prior to the expiry date.

Despite being served with the Notice of Hearing by registered mail sent on January 6, 2010 to the forwarding address supplied to the landlord by the tenant, the tenant did not appear.

### Issue(s) to be Decided

The landlord was seeking a monetary order for a loss of rent for the month of January 2010 during which the unit was vacant. The issues to be determined based on the testimony and the evidence is

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss of rent.

### Background and Evidence

The landlord testified that the fixed term tenancy began on April 1, 2009 and was to expire on March 31, 2010. The rent was \$1,500.00 per month and a security deposit of \$750.00 was paid. The landlord submitted into evidence a copy of the tenancy agreement.

The landlord testified that on November 28, 2009 the tenant gave written notice to move effective December 31, 2009. The landlord had submitted into evidence a copy of the tenant's notice to vacate. The landlord testified that attempts were made to re-rent the unit and it was advertised on Craigslist and in the local papers starting immediately after the tenant's notification was received. However, according to the landlord, the unit was not re-rented until February 1, 2010 and the landlord lost \$1,500.00 rent for January 2010, for which he is seeking compensation.

### **Analysis**

In regards to the landlord's claim for the loss of rent for January 2010, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

I note that there would be a violation of the Act under section 37 (2)(a) should the tenant fail to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear upon vacating it and the tenant would be liable for any costs or losses incurred by the landlord that flow from the tenant's failure to comply with the Act.

However, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that all elements of the test for damages have been satisfied and that the landlord is entitled to \$1,500.00 for the loss of rent for January 2010. I order that the landlord retain the \$750.00 security deposit in partial satisfaction of the claim leaving a balance due of \$750.00.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I grant the landlord a monetary order under section 67 of the *Act* for \$7,50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

June 2010

Date of Decision

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Dispute Resolution Officer