

## **DECISION**

Dispute Codes      MNDC, 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 only. The tenant did not attend.

In addition to the evidence provided by the landlord when she filed her application, she had submitted documentary evidence in support of her claim, however, this evidence was received by the Residential Tenancy Branch on June 21, 2010 only two days prior to the hearing in contravention of the Residential Tenancy Rules of Procedure that require evidence to be served at least five days prior to the hearing. As this evidence was received late it has not been considered in this decision.

The landlord testified she served the tenant with notice of this hearing via registered mail on January 15, 2010 sent to the forwarding address provided by the tenant on November 10, 2010. The landlord provided the Canada Post tracking number.

Section 90 of the *Residential Tenancy Act (Act)* deems a document served via mail as being served on the 5<sup>th</sup> day after it is mailed. I accept the tenant was sufficiently served for the purposes of the *Act*.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted in to evidence a copy of a tenancy agreement signed by the parties on January 1, 2009 for 1 year fixed term tenancy beginning on January 1, 2009 for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of the month, a security deposit of \$500.00 was paid on January 1, 2009.

The landlord testified that the tenant approached her in early October, 2009 stating he was going to be looking for cheaper accommodation and she informed the tenant that this was fine as long as he paid the rent for this rental unit until the end of the fixed term or found a replacement tenant.

The landlord testified that she posted an advertisement on Craig's List at that time to help the tenant find a replacement tenant but that she was unable to find a new tenant until January 2010.

The landlord testified that she discovered on November 2, 2010 that the tenant had moved out on November 1, 2010, without any notice other than the discussion they had held prior to the end of October, 2009.

### Analysis

Section 45 of the *Act* states a tenant cannot end a fixed term tenancy agreement earlier than the date specified in the tenancy agreement. The section goes on to say that if the landlord has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy on a date other than the end date specified in the tenancy agreement.

I find the tenant did not provide the landlord with a notice to end the tenancy that complied with Section 45 and therefore remain responsible for rent until the end of the tenancy agreement. As the landlord was unable to re-rent the rental unit prior to January 1, 2010, I find the tenant is obligated under his agreement to pay rent for the months of November and December, 2009.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,050.00** comprised of \$2,000.00 lost income and the \$50.00 fee paid by the landlord for this application.

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: June 24, 2010.

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Dispute Resolution Officer