

DECISION

Dispute Codes:

MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order for unpaid rent, damages to the unit, and loss of revenue, inclusive of recovery of the filing fee associated with this application. The landlord further applies for an order to retain the security deposit in partial satisfaction of the monetary claim.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 01, 2004. Rent in the amount of \$700* is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$332.50. The tenant provided the landlord with a Notice to Vacate received by the landlord on November 03, 2009. The tenant also failed to pay rent for November 2009 as their rent cheque was returned to the landlord as NSF for which the landlord claims \$25 in bank fees.

On November 27, 2009 the tenant vacated and failed to attend a pre-scheduled move out inspection with the landlord. The landlord conducted the inspection and determined a number of deficiencies for cleaning and some damages inclusive of damage to kitchen cabinets, missing handles and damage to the kitchen counter. The landlord

also needed to replace a closet door and remove some shelving. The landlord claims a total of \$473 for remediation of the rental unit.

The landlord is claiming loss of revenue for the month of December, given that the tenant supplied a late Notice to Vacate (November 03, 2009) the landlord testified that they employ continuous advertising for all of their rental units in an effort to attract renters, and that in this matter, it did not. The quantum of the landlord's monetary claim on application is as follows;

Move out charges – maintenance	\$473
Rent for November 2009	\$700
Late fee for November 2009	\$ 25
NSF fee for November 2009	\$ 25
Loss of revenue for December 2009	\$700
Total	\$1923

Analysis

Based on the landlord's testimony and evidentiary submissions, I find the tenant has not paid the outstanding rent for November 2009 and has not applied for dispute resolution.

I grant the landlord **\$750** in unpaid rent, late fee and NSF charges. I also grant the landlord **\$473** for remediation of the rental unit.

Section 7 of the Act provides as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord may well have made a reasonable effort to minimize their losses by way of their advertising system, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act in giving the landlord a Notice to Vacate 3 days later than when they were obligated. In this matter, the landlord testified the rental unit was not again re-rented until February 2010. Therefore, I decline to accept the landlord's claim for loss of revenue for December 2009.

As for the monetary order, I find that the landlord has established a claim for **\$1223** in unpaid rent and fees, and **\$473** in deficiencies on move out.. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1273**.

Conclusion

I order that the landlord retain the deposit and interest of \$344.28 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$928.72**. If necessary, this order may be filed in the Small Claims Court 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*.
