

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent and an unpaid security deposit inclusive of recovery of the filing fee associated with this application. I accept the landlord's verbal amendment in the hearing that their application seeks compensation under the Residential Tenancy Act (the Act) for loss of revenue for the month of March 2010 in the amount of \$1200.

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. However, it is noted that the tenant submitted a package of 22 pages of evidence to this matter on June 25, 2010, which was also received by the landlord.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amount claimed for a security deposit?

Background and Evidence

The following is undisputed. The landlord and tenant entered into a tenancy agreement on February 06, 2010 to rent the rental unit as of March 01, 2010 for \$1200 per month. The tenant submitted, and the landlord collected, a security deposit in the amount of \$600. By February 10, 2010 it was understood by the parties that the tenant would not be taking the rental unit on March 01, 2010 and there was a verbal agreement for the tenant to rent an alternate suite in the residential house, for a lesser amount of rent. The tenant did not sign a new agreement for the alternate suite. After additional e-mail communication the landlord re-advertised the original suite in the classifieds on

February 15, 2010. The landlord testified that after February 06, 2010 the landlord fielded several enquiries regarding the suite in the week following; and, was not able to re-rent the suite for March or April 2010. The tenant's original cheques for the security deposit and for rent were subsequently stopped by the tenant, and rendered null and of no effect.

Analysis

On the preponderance of the evidence and on the undisputed testimony of the landlord I have reached a decision.

The Act states as follows:

Start of rights and obligations under tenancy agreement

16 . 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.

I find the tenant was obligated to give the landlord Notice to Vacate under Section 45 of the Act.

However, I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitles the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide 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 have made reasonable efforts to minimize their losses by re-advertising the rental unit 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. The landlord provided their

speculation that one of the purported enquiries in the week following February 06, 2010 may have resulted in a bona fide tenancy. In addition, the landlord testified that despite their advertising efforts from February 15, 2010, onward, continued loss resulted from a lack of tenants interested in this rental property for all of March and April 2010 and that it was re-advertised for a higher amount of rent (\$1450). As a result, the portion of the landlord's claim for loss of revenue for March 2010 is hereby **dismissed** without leave to reapply.

The landlord is not entitled to make a claim for a security deposit the landlord is not holding. A security deposit is money paid and to be held as security for any liability or obligation of the tenant respecting the rental unit tenancy. In this matter the rental unit was never occupied and a security deposit was not paid.

Conclusion

The landlord's application **is dismissed** in its entirety without leave to reapply.

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*.