

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 for March 2010, and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit as set off, or partial satisfaction of the monetary claim. I accept the landlord's verbal amendment in the hearing that they seek compensation for loss under the Residential Tenancy Act (the Act) for what the landlord terms in the tenancy agreement as an 'Early Termination fee', or, 'Placement fee" upon early termination of the fixed term. This aspect of the landlord's application is reflected in the application's details of dispute.

Therefore, the landlord applies for Orders as follows:

1. A Monetary Order for unpaid rent / Loss under the agreement - Section 67;
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application - Section 72.

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.

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 due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amount claimed for unpaid rent for March 2010?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony of the landlord is as follows. The tenancy began August 0, 2009 and the tenant vacated February 28, 2010. Rent in the amount of \$1995 was 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 \$997.50. The landlord received the tenant's written notice to vacate (Notice to End) on January 8, 2010 for the tenant to vacate the rental unit on or before March 01, 2010.

On February 28, 2010 the parties conducted a move out inspection at which time the tenant provided the landlord with their forwarding address in writing. The landlord testified there was no damage or other deficiencies to retain any of the security deposit.

The landlord testified that they advertised for new tenant, via their own channels, to rent the residential unit for March 2010 to July 31, 2010 only, as the owner of the property was returning and would take possession on August 1, 2010. The landlord testified this was very difficult to do as it would only be for 5 months, and they did not receive any takers. The owner agreed to retake possession April 01, 2010; therefore, the landlord only seeks rent for March 2010 in the amount of **\$1995**.

The landlord also seeks the 'Early Termination fee', or, 'Placement fee" upon early termination of the fixed term which is stipulated in the tenancy agreement to be 50% of the monthly rent – or **\$997.50**, GST in the amount of **\$49.88**, and an NSF fee of **\$25** for the stop payment on the March 2010 rent cheque .

The quantum of the landlord's monetary claim is for **\$3067.38**.

Analysis

Based on the testimony of the landlord, and on the preponderance of their submitted document evidence and testimony, **I find** that while the Act requires that a tenant may not give a Notice to end a tenancy not earlier than the date specified in a fixed term tenancy agreement, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to rent. There is no provision in the Act whereby tenants who vacate before the end date of a fixed term will be automatically held liable for loss of rent or revenue 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.

The landlord did not provide evidence of mitigation in this application. None the less, in this application the landlord may have made a reasonable effort to minimize their losses by 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. Rather, the landlord testified that their loss resulted from a lack of tenants interested in this rental property as it would only be available to rent for five (5) months. As a result, the portion of the landlord's claim for loss of rent for March 2010 **is hereby dismissed** without leave to reapply.

The landlord is entitled to the 'Early Termination fee', or, 'Placement fee' in the amount of **\$997.50**. I decline to grant the landlord GST as it is not included in the tenancy agreement and this portion is **dismissed** without leave to reapply.

As the landlord is not entitled to rent for March 2010, I decline to grant the landlord \$25 for their claim of an NSF fee for March 2010 rent and this portion is **dismissed** without leave to reapply.

As the landlord has been partially successful in their application, the landlord is entitled to partial recovery of their filing fee in the amount of **\$25**, for a total entitlement of **\$1022.50**. The security deposit will be off-set from the award made herein.

Conclusion

I order that the landlord may retain the security deposit of \$997.50 held by the landlord, and the landlord is being given a Monetary Order under section 67 of the Act for the balance in the amount of **\$25**. 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*.