

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 12, 2010 and again on March 30, 2010 to the address given to the landlords by the tenants. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep the tenants security deposit?

### Background and Evidence

The landlords testify that this tenancy was due to start on February 01, 2010 however the landlords agreed the tenants could move into the rental unit early on January 15, 2010. Rent for this unit was \$1,475.00 per month and this was due on the first of each month. The tenants paid a security deposit of \$737.50 on December 22, 2009. This was a fixed term tenancy for one year and was due to expire on January 31, 2011.

The landlords testify that they had an agreement with the tenants that they would waive the half months rent for January, 2010 on the condition that the tenants had a fixed term tenancy for the year. The landlords claim the tenants did not pay rent for February, 2010 and the landlords served the tenants with a 10 Day Notice to End Tenancy for unpaid rent. The tenants did not pay the outstanding rent and moved from the rental unit on February 18, 2010. The landlords state the rental unit was advertised and was re-rented for April 01, 2010.

The landlords seek to recover the half months rent for January, 2010 of \$737.50 as the tenants broke their agreement. The landlords also seek to recover the rent for February, 2010 of \$1,475.00. The landlords seek to recover a loss of rental income for March, 2010 of \$1,475.00 as the tenants had a fixed term tenancy which ended before the end of the fixed term.

The landlords testify that after the tenants moved from the rental unit they did not return all the keys or garage openers. The landlords had to pay \$200.00 to a locksmith to have the locks changed.

The landlords request to keep the security deposit in partial satisfaction of their claim and also seek to recover the filing fee.

### Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants to dispute the landlords claims. I find the landlord is entitled to recover unpaid rent for January, 2010

of \$737.50 as the tenants did not remain at the rental unit for the fixed term and therefore the agreement they had with the landlords to waive January's rent was breached by the tenants. I also find the landlords are entitled to recover rent for February of \$1,475.00 pursuant to section 67 of the *Act* as the tenants resided in the unit during this month and failed to pay rent.

With regard to the landlords' claim for a loss of rental income for March, 2010; I refer both parties' to Residential Tenancy Policy Guideline #3 – claims for rent and Damages for Loss of Rent which states the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. As this was a fixed term tenancy the landlord is entitled to sue the tenants for a loss of rental income up to the end of the fixed term or for the time the unit remained unoccupied. The landlords were able to re-rent the unit from April 01, 2010; consequently, the landlord only lost rental income for one month in March, 2010. Therefore, I find the landlord is entitled to recover a loss of rental income for March, 2010 of \$1,475.00 pursuant to section 67 of the *Act*.

The tenants have not disputed the landlords' claims that they did not return the keys or garage opener to the rental unit. The landlords have provided a receipt from the locksmith showing the amount charged to change the locks at a cost of \$200.00. Consequently, I find the landlords are entitled to recover this sum from the tenants pursuant to section 67 of the *Act*.

I also Order, pursuant to Section 38(4)(b), that the landlords may retain the full security deposit of \$737.50 towards the outstanding rent. As the landlords have been successful with their claim I also find they are entitled to recover the \$50.00 filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent for January and February, 2010	\$2,212.50
Cost of locksmith	\$200.00

Filing fee	\$50.00
Subtotal	\$3,937.50
Less security deposit	\$737.50
<b>Total amount due to the landlords</b>	<b>\$3,200.00</b>

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,200.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: July 07, 2010.

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Dispute Resolution Officer