

## **Decision**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an initial application by the landlord for a monetary order as compensation for unpaid rent, and recovery of the filing fee. During the hearing the application was amended to include an application to retain the security deposit.

The landlord's agent participated in the hearing and gave affirmed testimony. Despite service by way of registered mail with the application for dispute resolution and notice of hearing, the tenant did not appear.

### **Issues to be decided**

- Whether the landlord is entitled to any of the above under the Act

### **Background and Evidence**

A copy of the written tenancy agreement was not in evidence for the month-to-month tenancy which began on December 1, 2009. Rent in the amount of \$1,107.00 was payable in advance on the first day of each month. A security deposit of \$553.50 was collected at the outset of tenancy.

By way of letter dated on or about March 29, 2010, the tenant gave notice of his intent to end the tenancy effective March 31, 2010. Subsequently, by way of advertising the landlord found new renters and collected 3 days' worth of pro-rated rent for the period from April 28 to 30, 2010.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent." In short, if a tenant fails to provide proper notice to end the tenancy, the landlord may be compensated "for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy."

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that as the tenant's notice to end tenancy did not comply with the above statutory provisions, the landlord has established entitlement to compensation for loss of rental income for a portion of April 2010.

I find that pro-rated rent for the 3 days from April 28 to 30 is calculated as \$110.70  $[(\$1,107.00 \div 30) \times 3]$ . I find that the landlord has established entitlement to loss of rental income for the balance of April 2010 in the amount of \$996.30  $(\$1,107.00 - \$110.70)$ .

As the landlord has succeeded in this application, I find that the landlord has also established entitlement to recovery of the \$50.00 filing fee. The total entitlement is therefore \$1,046.30  $(\$996.30 + \$50.00)$ .

Residential Tenancy Policy Guideline # 17 addresses "Security Deposit and Set off," and provides in part:

The [Act] provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord...

I order that the landlord retain the security deposit of \$553.50 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$492.80 (\$1,046.30 - \$553.50).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$492.80**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 3, 2010

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Dispute Resolution Officer