

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the tenants a copy of the application for dispute resolution by registered mail on May 21, 2010. The tenants confirmed that they received this application by registered mail. I am satisfied that the landlord served this application in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary order? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of any monetary award granted? Is the landlord entitled to recover his filing fees for this application from the tenants?

Background and Evidence

This six-month fixed term tenancy commenced on November 1, 2009. At the expiration of the six-month term on April 30, 2010, the tenancy agreement was to convert to a month-to-month lease. The tenants were paying \$1,175.00 in monthly rent, payable on the first of each month. The landlord provided evidence that he continued to hold the tenants' \$587.50 security deposit paid on October 30, 2009.

The landlord entered into evidence a copy of a March 18, 2010 Tenant's Notice to End Tenancy signed by the female tenant. In that notice, the female tenant advised the landlord that the tenants would be vacating the premises on the last day of May 2010. Both parties confirmed that there had been discussion between the landlord and the tenants and efforts by both parties in April and May 2010 to rent the premises to another tenant. The landlord provided undisputed testimony that he broadly advertised the premises, but was unable to rent the rental premises until June 1, 2010.

The tenants confirmed that the female tenant made a written mistake in how she completed the March 18, 2010 notice to end tenancy. The female tenant said that she made an error in the date she identified in the notice. The male tenant testified that he would have stayed at the rental premises for the month of May had he known the landlord would hold them responsible for rent for that month. He said that the landlord did not mention their responsibility for rent for May 2010 until they received the landlord's application for dispute resolution.

The landlord testified that he first learned that the tenants had vacated the rental premises on May 3, 2010. He said that until then he was following the tenants' written direction that they would not be vacating the premises until May 31, 2010. He said that the male tenant returned to clean the rental unit after May 3, 2010.

Analysis

Although the tenants signed a six-month fixed term tenancy agreement, they noted on that agreement that the tenancy was to continue on a month-to-basis after the end of that six-month period on April 30, 2010. The tenants provided written direction to the landlord that they were vacating the premises on the last day of May 2010. While it may very well have been the female tenant's intention to end the tenancy on April 30, 2010, her written direction to the landlord ended the tenancy on May 31, 2010. Based on the tenancy agreement and the tenant's written notice, I find that the landlord suffered a

rental loss for May 2010. Based on his attempts to rent the premises for May 2010, I am satisfied that he has sufficiently mitigated his damages.

I find that the tenants are responsible for \$1,175.00 in unpaid rent for May 2010. I make a monetary award in this amount in the landlord's favour. I allow the landlord to retain the tenant's security deposit. As the landlord has been successful in his application, I authorize him to recover his filing fees from the tenants.

Conclusion

I grant the landlord a monetary order in the following terms. This monetary order allows the landlord to retain the tenants' security deposit and to recover the landlord's filing fee for this application.

Item	Amount
Unpaid May 2010 Rent	\$1,175.00
Less Security Deposit	-587.50
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$637.50

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.