

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulations or tenancy agreement, an Order to keep the security and pet damage deposits and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on July 12, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Preliminary Issues

That the outset of the hearing the landlord stated that the unit was re-rented for August, 2010. Therefore he has amended his application for a Monetary Order for a reduced sum of outstanding rent to \$1,970.00.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

- Is the landlord entitled to a Monetary Order for money owed or compensation for loss or damage?
- Is the landlord entitled to keep the security and pet damage deposits?

## Background and Evidence

This tenancy started on November 15, 2008. This was a fixed term tenancy which was due to end on November 30, 2010. The tenant moved from the rental unit on June 24, 2010. The monthly rent for this unit was \$1,750.00 per month and was due on the first of each month. The tenant paid a security deposit of \$875.00 and a pet deposit of \$250.00 both on October 30, 2008.

The landlord testifies that the tenant ended the tenancy before the end of the fixed term. The landlord made many attempts to re-rent the unit as soon as he received notice from the tenant to end the tenancy. The unit was re-rented for August 01, 2010. The landlord seeks to recover rent for July, 2010 of \$1,750.00. The landlord states he had to reduce the rent to \$1,695.00 in order to re-rent the unit and seeks to recover the difference of \$55.00 per month for August, September, October and November, 2010 which is the date the tenancy would have ended according to the fixed term.

The tenant did not dispute the landlords claim for unpaid rent for July, 2010. However the tenant dispute the landlords claim for the difference between the new rent and the rent she had agreed to pay.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent; when a tenancy is a

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fixed term tenancy the tenant is responsible to pay the rent up to the end of the fixed term or up to the date the landlord is able to re-rent the unit. In this case the tenant did end the tenancy before the end of the fixed term and the landlord has provided sufficient evidence to show he attempted to mitigate his losses by advertising and showing the unit to prospective tenants. As the unit was re-rented for August 01, 2010 I find the landlord has established his claim for unpaid rent for July, 2010 of **\$1,750.00** pursuant to s.67 of the *Act*.

With regards to the landlords claim for compensation as he had to re-rent the unit for a lower amount of rent; section#3 of the Residential Tenancy Policy Guidelines 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 time the tenant could have legally ended the tenancy and includes compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In this instance the landlord re-rented the unit at the monthly rent of \$1,695.00 and his loss was \$555.00 per month for the remaining four months of the tenancy.

Consequently, I find the landlord is entitled to recover the sum of **\$220.00** from the tenant pursuant to s.67 of the *Act* for this shortfall in the rent.

I Order the landlord to keep the tenants security deposit of \$875.00 and pet deposit of \$250.00 plus accrued interest of \$2.95 towards the unpaid rent pursuant to s. 38(4)(b) of the *Act*.

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As the landlord has been successful with his amended claim I find he is entitled to recover his **\$50.00** filing fee pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for July, 2010	\$1,750.00
Subtotal	\$1,970.00
Plus filing fee	\$50.00
Less security and pet damage deposit and accrued interest	(-\$1,127.95)
<b>Total amount due to the landlord</b>	<b>\$892.05</b>

## Conclusion

I HEREBY FIND in favor of the landlords amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$892.05**. The order must be served on the respondent 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: October 12, 2010.

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Dispute Resolution Officer