



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and a monetary order for loss of income, cost of cleaning and repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenant has moved out, the landlord withdrew her application for an order of possession. Therefore, this hearing only dealt with the landlord's monetary claim for loss of income, cost of repairs and cleaning, filing fee and to retain the security deposit.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover loss of income, cost of repairs and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The landlord testified that the tenancy started May 01, 2010 for a fixed term of one year. The monthly rent was \$1,075.00 plus \$45.00 for parking and was payable in advance on the first of each month. The tenant paid a security deposit in the amount of \$537.50.

The tenant stated that he requested some extra time to pay rent and the manager agreed that he could pay rent on September 05 along with a late fee of \$25.00. However on September 04, the landlord served the tenant with a ten day notice to end tenancy.

The tenant decided to move out and did so on September 17, 2010. The landlord found the keys in the office mail slot the next day. The landlord stated that the unit was not cleaned and there was some damage to a wall. The tenant agreed that he had left without cleaning and agreed to pay \$250.00 towards cleaning and fixing the damage. The tenant also agreed to drop off an electronic door opener that he had in his possession. The landlord agreed to accept \$250.00 in full settlement of her claim for damages and cleaning.

The landlord stated that she advertised the unit in the local papers, on the internet and on site, but was unable to find a tenant for October 01, 2010. However the landlord did find a tenant for October 15, 2010.

The landlord is claiming rent for September and loss of income for October. The tenant agreed that he had not paid rent for September. The landlord is also claiming the recovery of the filing fee.

### **Analysis**

The tenant agreed that he owed rent for September. Therefore the landlord has established a claim for \$1,120.00 which includes the parking charge.

The landlord suffered a loss of income for part of October and is claiming \$508.06. The tenant was in a fixed term tenancy agreement and breached the terms of the contract. The damages that can be awarded to the landlord 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 that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by advertising the availability of the unit. In this case, the landlord advertised in local papers, on the internet and on site. Therefore I find that the landlord has established a claim for \$485.38 which is the prorated rent for the period that the unit was vacant.

Since the landlord has proven her case, I also find that she is entitled to the filing fee of \$50.00.

Over all, the landlord has established a claim for the following:

|    |                         |                   |
|----|-------------------------|-------------------|
| 1. | Rent for September 2010 | \$1,120.00        |
| 1. | Loss of income          | \$485.38          |
| 2. | Cleaning and Repair     | \$250.00          |
| 3. | Filing fee              | \$50.00           |
|    | Total                   | <b>\$1,905.38</b> |

I order that the landlord retain the security deposit of \$537.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,367.88. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order for **\$1,367.88**.

The tenant must return the electronic key device to the landlord.

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 21, 2010.

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Dispute Resolution Officer