

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to retain all or a portion of the tenants' security deposit and to recover his filing fees for this application pursuant to section 72 of the *Act*.

The tenants did not attend this hearing. The landlord attended the hearing and was 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 his application for dispute resolution on July 7, 2010. He provided a copy of the Canada Post Tracking Number to confirm this mailing. He also sent a copy of the returned envelope from Canada Post, as the tenants did not pick up this letter. I am satisfied that the landlord served the tenants with his application for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit? Is the landlord entitled to recover his filing fees for this application from the tenants?

Background and Evidence

The landlord testified that this month-to-month tenancy commenced on August 1, 2008. At the time the tenants vacated the premises by June 1, 2010, they were paying \$778.00 in monthly rent. He said that he continues to hold the tenants' \$375.00 security deposit plus applicable interest, paid on or about August 1, 2008.

The landlord testified that the tenants did not give adequate notice when they ended their tenancy. He said that on May 28, 2010 the tenants gave him written notice of their intention to end their tenancy by June 1, 2010. The landlord testified that he was able to rent the premises to other tenants for the period from June 12, 2010 until the end of

June 2010 at a rate of \$750.00 per month. For the nineteen days when the new tenants occupied the rental premises, he said that they paid the pro-rated amount of \$474.98. He testified that he incurred a loss of the rental difference between the \$778.00 owed by the tenants for June 2010 and the \$474.98 he received from the new tenants. The landlord asked to recover the \$303.02 he lost as a result of the tenants' inadequate notice to end their tenancy from the tenants' security deposit. He also asked for recovery of his \$50.00 filing fee.

Analysis

I accept the landlord's undisputed evidence that the tenants did not provide adequate written notice of their end to this tenancy. The landlord has a duty to attempt to mitigate the tenants' responsibility for the landlord's losses. In this case, the landlord was able to re-rent the premises as of June 12, 2010, although at a lower rental amount. I am satisfied that the landlord has discharged his duty to sufficiently mitigate the tenants' losses for rental income for June 2010. I allow the landlord a monetary award of \$303.02 to be deducted from the tenants' security deposit. This monetary award is for the rental difference between what the tenants were obligated to pay for June 2010 rent as a result of their inadequate notice to end this tenancy and the amount received from the new tenants for that month.

Since the landlord has been successful in his application, I allow him to recover his \$50.00 filing fee for this application from the tenants' security deposit

Conclusion

I allow the landlord to retain \$353.02 from the tenants' security deposit in satisfaction of the following monetary award granted to the landlord.

Item	Amount
Tenants' Unpaid June 2010 Rent	\$778.00
June 2010 Rent Received from new tenants (June 12- June 30)	-474.98
Recovery of Filing Fee for this application	50.00
Total to be Retained from Tenants' Security Deposit	\$353.02

The present value of the tenants' security deposit plus interest from August 1, 2008 is \$377.35 (i.e., \$375.00 plus \$2.35 = \$377.35). I issue a monetary Order in the tenants' favour requiring the landlord to pay the tenants the remaining \$24.33 from the security deposit he continues to hold from this tenancy.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.