

## **Decision**

### **Dispute Codes:**

MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for \$774.00.00 loss of rent for July 2010 due to inadequate notice by the tenant and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental loss owed due to the tenant's short notice to end the tenancy.

### **Background and Evidence**

The landlord submitted into evidence a copy of the tenancy agreement and condition inspection report dated June 30, 2010.

The landlord testified that the tenancy began on September 1, 2008 at which time the tenant paid a security deposit of \$375.00. The landlord testified that the tenant gave notice on June 1, 2010 to move out as of July 1, 2010. A copy of the tenant's written notice was in evidence. The landlord testified that that efforts to re-rent were initiated immediately by advertising on Craigslist. No copies of the ads were submitted into evidence, but the landlord testified that despite 4 early showings of a similar suite which was in better condition, no renters were found to take the tenant's suite in the month of July 2010. According to the landlord, this resulted in loss of a month rent in the amount of \$774.00, which is being claimed.

The tenant disputed the landlord's claim on the basis of the fact that the property manager had advised them when they moved in that it was acceptable to give written notice to move at the same time as they paid their rent. The tenant also testified that

the landlord did not advertise nor show their suite during the four weeks following the date the notice was given and that the building did not post a “vacancy” sign in front.

The landlord argued that another to-be-vacant suite was shown to prospective renters as it was in more pristine “showable” condition and was more readily available as the current occupant was away. The landlord also pointed out that the building’s signage had been stolen, so the vacancy could not be posted in front of the complex..

### **Analysis**

In regards to an Applicant’s right to claim damages from another party, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

I find that the landlord has fully met elements 1, 2 and 3 of the test for damages. In regards to element 4 of the test, which relates to whether or not the landlord’s actions in mitigating the loss were reasonable, I find that the landlord was aware that the tenant would be vacating and the expectation would be that advertising would commence as of June 1, 2010 in preparation to obtain a tenant for July. I find that, while advertising may have occurred, the landlord offered only verbal testimony which was challenged by the respondent.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving during these proceedings, that the compensation being claimed as damages is justified under the Act.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof is not likely to prevail. I find it is not necessary to determine which side is more credible or which set of "facts" is more believable because the claimant, that being the landlord, has not succeeded in sufficiently proving that every element in the test for damages was satisfied. I find that the landlord has failed element 4 of the test for damages and loss.

Being that the burden of proof was not sufficiently met, I find that the landlord's application and monetary claim must be dismissed. Given the above, I find that the landlord must return to the tenant, \$376.88 representing the security deposit and interest.

### **Conclusion**

I hereby grant the tenant a monetary order under section 38 for \$376.88. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: November 2010.

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Dispute Resolution Officer