

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the landlord's Application for Dispute Resolution, and pursuant to a Review Hearing allowing a rehearing of this matter. The landlord has made application, which is amended to reflect a request for a monetary order of \$3200 for unpaid rent and compensation for loss of revenue pursuant to a fixed term tenancy agreement, and to retain the security deposits in partial satisfaction of the monetary claims. All other claims in the application are dismissed, without leave to reapply.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matters

In concert with the previous decision in this matter:

I find that any further Applications made by either party, in relation to these tenancies may be heard via one Application; however, I find that the tenants are not co-tenants;

the two tenancies in this matter are determined as one Application.

Issue(s) to be determined

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

This tenancy (2 identically termed tenancies) started September 1, 2009 as a fixed term tenancy for 12 months with an end date of August 31, 2010. Rent was a total of \$1150

per month; each tenant paid a \$575.00 deposit, for total deposits \$1150, which the landlord still retains.

The landlord's evidence is that the tenancy agreement provides that the rent for May to August 2010 is reduced to \$400 per month to the end of the fixed term. The affirmed testimony is that the tenants advised the landlord via e-mail in early May 2010 that they had vacated on April 16, 2010, and would not be returning. The landlord testified that they did not have prior knowledge of the tenant's actions and were not provided with a Notice to Vacate. The tenants testified that despite the lack of a written notice to vacate, the landlord should have known from prior communication with the tenants that they were vacating. The landlord testified that he made immediate efforts to re-rent the units for June 2010, by advertising on Craigslist, and the landlord provided evidence of these efforts.

The landlord's claim is for unpaid rent and loss of revenue in the aggregate of \$400 per month X 2(\$800) for May to August 2010 – for a sum of \$3200.

Analysis

Sections 44 and 45 of the Residential Tenancy Act (the Act) provides, in part as relevant, as follows: **(emphasis for ease)**

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate

the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Conclusion

On preponderance of the evidence, I find that the tenants owe the landlord the balance of the contractual fixed term agreement. I am satisfied that the landlord employed sufficient means to mitigate loss of revenue. As a result, I grant the landlord unpaid rent and compensation for loss of revenue for the months of May to August 2010, in the aggregate of **\$3200**.

I order that the landlord retain the **deposits** totalling \$1150 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$2050**. If necessary, this order may be filed in the Small Claims Court 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*.