



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 3, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on September 8, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to a monetary claim as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement effective April 1, 2010 which was set to switch to a month to month tenancy after September 30, 2010. Rent was



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payable on the first of each month in the amount of \$800.00 and \$400.00 was paid by the Tenant as a security deposit on September 3, 2009.

The Tenant e-mailed the Landlords on August 24, 2010 to advise she would not be renewing her lease and she would be moving out in September 2010 sometime. The Tenant later advised that she would be vacating the unit August 31, 2010 and she did not pay anything towards September 2010 rent. A move-out inspection report was completed August 31, 2010 where the Tenant signed in agreement for the Landlord's to retain \$250.00 of the security deposit for damages. The Landlords dispersed the balance of the security deposit of \$150.00 on September 8, 2010.

The Landlords began advertising the unit immediately upon receiving the Tenant's first e-mail however they were not able to re-rent the unit until February 1, 2011 for a lower rent of \$700.00 per month. They are seeking monetary compensation of \$800.00 for September 2010 rent which is the one month that remained in the fixed term that was not paid.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.



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Section 45 of the Act provides a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case, the evidence supports the fixed term tenancy did not end until September 30, 2010, therefore the Tenant breached the Act by vacating the unit August 31, 2010 and not paying rent for September 2010. Based on the aforementioned I find the Landlord has met the burden of proof and I hereby approve his monetary claim of \$800.00.

Conclusion

A copy of the Landlord's decision will be accompanied by a monetary order of **\$800.00**. The order must be served upon the Tenant and may be filed in Provincial 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*.

Dated: December 31, 2010.

Residential Tenancy Branch