

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by agents for the landlord and by both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants and the landlord submitted a copy of a tenancy agreement and addendums signed by the parties on July 13, 2010 for a 1 year fixed term tenancy beginning on August 1, 2010 for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month and a security deposit of \$750.00 was paid.

The tenancy agreement includes a liquidated damages clause indicating that should the tenant end the tenancy prior to the end of the fixed term, the tenant is to pay the landlord \$750.00 as liquidated damages and not as a penalty.

The landlord and tenants also submitted into evidence a copy of a letter from the tenants to the landlord dated October 25, 2010 giving notice to end the tenancy on October 31, 2010. The landlord provided evidence and testimony that a new tenant was secured for February 1, 2011 but that the new tenant took possession of the rental unit in mid January 2011.

The landlord claim for lost revenue consists of rent for the full month of December 2010 (\$1,500.00) and for a portion of January 2011 (677.37). The landlord further acknowledges that they have failed to return the tenant's key deposit and will reduce their claim by the \$50.00 key deposit.

The tenants submit that they acted in good faith and needed to end the tenancy as a direct result of a medical circumstance with their daughter who had been living in the rental unit that required her to move out of the country.

The tenants contend that they have already paid more and above any legal requirements. The landlord also submitted a copy of a letter dated October 29, 2010 from the tenants indicating they had provided the landlord with a cheque for \$1,655.00 to cover rent for November, 2010 and cleaning charges in the amount of \$175.00.

The landlord testified that advertising occurs on a regular basis and has submitted receipts showing actually expenses incurred in advertising. The landlord also testified that the estimate for liquidated damages is based on advertising costs and administrative costs such as showing the rental unit; reviewing tenancy applications and settling tenancy agreements.

### Analysis

To be successful in a claim for compensation for loss or damages, the applicant must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that, among other things, is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 53 states that should a tenant gives a notice to end tenancy on a date that does not comply with Section 45 the effective date is deemed to be the earliest date that complies with that section. As the end date for the fixed term of the tenancy was July 31, 2011, I find the tenants are responsible for rent on the unit until this time, subject to the landlord's obligation to mitigate any lost revenue.

I accept that the landlord took reasonable steps to mitigate any damage or loss resulting from the tenants ending the tenancy prior to the end of the fixed term and as a result reduced the loss attributed to the tenants by renting the unit out by mid January 2011.

As per the Residential Tenancy Policy Guidelines a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

Based on the landlord's evidence and testimony, I accept that the landlord has established the sum of \$750.00 agreed to by the parties at the start of the tenancy as the amount for liquidated damages to be a true pre-estimate of the loss.

## Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,927.37** comprised of \$2,177.37 rent owed; \$750.00 liquidated damages; and the \$50.00 fee paid by the landlord for this application; less the tenants' key deposit of \$50.00.

I order the landlord may deduct the security deposit and interest held in the amount of \$750 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,177.37**. This order must be served on the tenants 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: March 10, 2011.

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Residential Tenancy Branch