

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for a monetary order for unpaid rent pursuant to section 67. The tenant applied for authorization to obtain a return of twice the amount of his security deposit pursuant to section 38. Both parties applied to recover their respective filing fees for their applications pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:51 a.m. in order to enable the tenant to connect with 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 a copy of his dispute resolution hearing package to the tenant's last known address by registered mail on or about November 9, 2010. He provided a Canada Post Tracking Number to confirm this mailing. The landlord and his wife testified that the tenant handed the landlord's wife a copy of his dispute resolution hearing package on March 2, 2011. I am satisfied that both dispute resolution hearing packages were served in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to obtain a monetary award for a return of all or a portion of his security deposit? Are either of the parties entitled to recover their filing fees from the other party?

### Background and Evidence

This tenancy commenced on July 15, 2009 as a one-year fixed term tenancy to a male and a female tenant. Upon the expiration of the fixed term, this tenancy continued on a month-to-month basis. Monthly rent was set at \$1,350.00, payable on the first of each month. The landlord provided a copy of the receipt he provided for the tenant's July 15, 2009 security deposit of \$675.00.

The landlord testified that he understood that the female listed on the original tenancy agreement moved out of the rental unit by mid-August 2010. The landlord said that he left a phone message for the tenant on September 29, 2010, advising that he would be out of town from October 5 until October 25, 2010. When the landlord returned, he discovered that the tenant had stopped payment on his \$1,350.00 cheque for the October 2010 rent. The landlord said that he attempted to contact the tenant, left messages for him, and obtained possession of the rental unit by November 9, 2010. He

testified that by the time he was able to enter the rental unit, the tenant had vacated the premises.

The landlord applied for a monetary award of \$2,700.00 for unpaid rent for October and November 2010, plus recovery of his \$50.00 filing fee. He said that he attempted to rent the premises by placing advertisements in the local newspaper and on a local website, but was unable to re-rent the premises until February 2011.

The landlord testified that he did not receive the tenant's August 30, 2010 letter advising him that he intended to end this tenancy by the end of September 2010 until he received a copy of this letter with the tenant's dispute resolution hearing package on March 2, 2011. He provided written evidence that he forwarded the tenant a cheque for \$453.82 of the tenant's security deposit.

#### Analysis

As the tenant did not attend this hearing, I dismiss his application for return of the security deposit without leave to reapply.

Based on the evidence presented, I am satisfied on a balance of probabilities that the landlord is entitled to a monetary award of \$2,700.00 for unpaid rent for October and November 2010. Since the landlord has been successful in his application, I allow him to recover his filing fee for this application from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain that portion of the security deposit plus interest that has not already been returned to the tenant to partially offset the monetary award issued to the landlord. No interest is payable over this period.

#### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and his filing fee for this application and to retain the remaining portion of the tenant's security deposit.

Item	Amount
Unpaid October 2010 Rent	\$1,350.00
Unpaid November 2010 Rent	1,350.00
Less Retained Portion of Security Deposit (\$675.00 - \$453.82 = \$221.18)	-221.18
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,528.82</b>

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

I dismiss the tenant's application without leave to reapply.

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*.