

## **DECISION**

**Dispute Codes:** *MNSD, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages, cleaning costs, bank fees, and the filing fee. The landlord applied to retain the security deposit in partial satisfaction of her claim.

The landlord testified that she served the notice of hearing by registered mail to the tenant, at an address that the tenant had indicated was her permanent address. The landlord stated that the tenant had rented the unit on a temporary basis, to be close to her new job while she maintained her permanent residence. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cleaning costs, bank fees and for the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The landlord testified that the tenancy started on August 15, 2010 for a fixed term of one year ending on June 30, 2011. Prior to moving in, the tenant paid a security deposit of \$307.50. The monthly rent was \$615.00 payable on the first day of each month. The tenancy agreement contained a clause that requires a tenant to pay liquidated damages in the event the tenant ends the tenancy prior to the end date of the agreement. The liquidated damages will cover the administration costs of re renting the unit.

However, the amount of the liquidated damages is blank on the tenancy agreement and therefore the landlord withdrew her claim for \$300.00 for liquidated damages.

The landlord stated that the tenant had a pet and was asked to pay a pet security deposit. The tenant failed to do so. The first two rent cheques were returned for lack of funds. The tenant also had her adult son living in the unit without the permission of the landlord. On October 04, the landlord served the tenant a warning letter regarding the above issues. For the same reasons, on October 13, 2010; the landlord served the tenant with a one month notice to end tenancy for cause.

The tenant did not dispute the eviction notice and moved out on October 31, 2010. She left behind a note listing the various tasks that she had performed in the unit, to restore it to its original condition.

The landlord stated that, she advertised the vacancy in the local newspaper and Craig's list starting October 18, 2010 and found a tenant for March 01, 2011. The landlord stated that it is very difficult to find a tenant during the winter months and has had vacancies for multiple months during past winters.

The landlord is claiming the following:

1.	Loss of income for November 2010 to March 01, 2011	\$2,460.00
2.	Carpet cleaning	\$89.10
3.	Utilities August 16 – November 03, 2010	\$27.70
4.	Bank fees (2 NSF cheques + 1 stopped cheque)	\$120.00
5.	Administrative fees (2 NSF cheques + 1 stopped cheque)	\$70.00
6.	Filing fee	\$100
	Total	<b>\$2,866.80</b>

The landlord stated that on March 07, 2011, she had filed evidence to support all of the above claims by way of invoices and rental advertisements, but as of the date of the hearing, this evidence was not received at the Residential Tenancy Branch.

### **Analysis**

Residential Tenancy Branch Rules of Procedure 3.5 (a) entitled "Evidence not filed with the application for dispute resolution" states that copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy at least five days before the dispute resolution procedure.

In this case the landlord's evidence was not received by the Residential Tenancy Branch prior to the hearing. The landlord stated that she mailed the package from an international location on March 07, 2011. Section 90 of the *Residential Tenancy Act* states that a document is deemed to be received on the fifth day after it is mailed. Therefore, it would have been received at the Residential Tenancy Branch no earlier than March 14, which is not adequate time to be considered for a hearing that is scheduled for March 16. In any event, this evidence package had not been received at the Residential Tenancy Branch as of the day of the hearing. The landlord filed her application on November 12, 2010 and therefore could have mailed her evidence in plenty of time. Accordingly, this decision is based only on the evidence that is before me.

In this case, the tenant moved out on October 31, 2010 without giving the landlord proper notice to end the tenancy thereby causing the landlord to suffer a loss of income for November. Pursuant to section 45, the tenant must pay rent for November. The landlord is claiming rent for an additional three months as she was not successful in finding a tenant until March 01, 2011. When claiming damages, the landlord has a legal obligation to do whatever is reasonable to minimize the loss. The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The Dispute Resolution Officer may require evidence such as advertising receipts to prove mitigation.

The landlord stated that it is common knowledge that residents of the local area do not move during winter and as such she has suffered several income losses in the past. Despite this knowledge, the landlord served the tenant with a notice to end tenancy less than two months into the tenancy, for not having paid a pet deposit and having an occupant in the unit without prior permission of the landlord. The landlord served the tenant a warning letter on October 04 and followed it up with a notice to end tenancy on October 13. I find that the landlord, knowing full well that finding a tenant in winter would be difficult, could have given the tenant some more time and an opportunity to correct the problem, prior to serving her with a notice to end tenancy.

For this reason and without any evidence of having taken steps to advertise the availability of the rental unit before me, I find that the landlord is not entitled to loss of income for December, January and February.

There is no evidence to support the landlord's claim of \$89.10 for carpet cleaning. However based on a clause in the tenancy agreement that requires the tenant to have the carpets cleaned professionally and based on the move out inspection report, I find that the landlord is entitled to the cost of cleaning the carpets in the amount of \$89.10.

There is no evidence to support the landlord's claim for utilities, in the amount of \$27.70 and I find the evidence that the landlord has filed in support of bank fees in the amount of \$140.00 is not adequate to prove her claim. Therefore the landlord's claim for these items is dismissed.

I find that the landlord has proven her claim for administrative fees in the amount of \$50.00 for two cheques that were returned for insufficient funds. In a letter dated October 28, the tenant advised the landlord that she had put a stop payment on the rent cheque for November. Despite being informed, the landlord attempted to cash the cheque and incurred a cost of \$40.00 in bank fees. I find that the landlord must bear this cost.

The landlord has proven a portion of her claim which is less than \$5,000.00 and is therefore entitled to the filing fee in the amount of \$50.00.

.

The landlord has established a claim as follows:

1.	Loss of income for November 2010 to March 01, 2011	\$615.00
2.	Carpet cleaning	\$89.10
3.	Utilities August 16 – November 03, 2010	\$0.00
4.	Bank fees (2 NSF cheques + 1 stopped cheque)	\$0.00
5.	Administrative fees (2 NSF cheques + 1 stopped cheque)	\$50.00
6.	Filing fee	\$50.00
	Total	<b>\$804.10</b>

Overall the landlord has established a claim of \$804.10. The tenant had made an overpayment of \$38.75 and therefore this amount is deducted from the landlord's claim. The balance owed by the tenant is \$765.35. I order that the landlord retain the security deposit of \$307.50 in satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$457.85. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$457.85**.

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 16, 2011.

---

Residential Tenancy Branch