

DECISION

Dispute Codes: *MNSD, 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, for the cost to replace the remote control, for the recovery of the filing fee and to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were 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, for the cost of replacing the remote control and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on October 01, 2010 for a fixed term of one year with an end date of September 31, 2011. Rent was \$600.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$300.00.

The tenant stated that on June 29, 2011 he wrote a note giving the landlord notice to end the tenancy effective July 31, 2011. The tenant intended to give this note to the landlord when visited the rental unit. The landlord failed to visit the unit that day. On July 08, 2011 the tenant served the notice in person to the landlord. The landlord advertised the availability of the unit and filed a copy of the advertisement. The landlord also filed copies of her phone ledger indicating that she did receive a fair response to the advertisement but was unsuccessful in finding a tenant for August.

The tenant moved out on July 31 and gave the landlord his forwarding address in writing on August 02. The tenant agreed to allow the landlord to retain \$35.00 of the security deposit towards the cost of replacing the remote control.

The landlord stated that she was able to find a tenant for September and is claiming \$600.00 as loss of income for the month of August.

The tenant argued that the landlord did not maintain the unit during the tenancy and also did not conduct a move out inspection. I informed the tenant that these issues are not related to the dispute at hand and that he was at liberty to file his own application for dispute resolution.

Analysis

Section 45 of the *Residential Tenancy Act*, states that 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 one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case the tenant did not give adequate notice to end the tenancy, by serving the landlord on July 08, a notice to end tenancy effective July 31.

By ending the tenancy prior to the end date of the fixed term and/or not providing adequate notice, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the landlord advertised the unit and was able to find a renter for September, 2011. I find that the landlord made efforts to mitigate her losses but despite her efforts she suffered a loss of income for the month of August. I find that the landlord is entitled to her claim of **\$600.00**.

The tenant agreed to pay for the cost of replacing the remote control in the amount of **\$35.00**.

The landlord has proven her case and is therefore entitled to the recovery of the filing fee of **\$50.00**.

Overall the landlord has established a claim for \$685.00. I order that the landlord retain the security deposit of \$300.00 plus accrued interest of \$0.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$385.00. 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 **\$385.00**.

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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: November 09, 2011.

Residential Tenancy Branch