

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, O

### Introduction

This is an application filed by the Landlord for an order of possession for unpaid rent, a monetary order request for unpaid rent, for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties attended the hearing and made detailed reference to the evidence submitted, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

At the beginning of the hearing, the Landlord withdrew the application for an order of possession as the Landlord has possession of the rental unit. The Landlord is seeking a monetary order for ½ of the rent (\$875.00) as they were able to re-rent the unit for November 15, 2011, liquidated damages of \$875.00, to retain the \$875.00 security deposit to offset the claim and recovery of the \$50.00 filing fee.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for loss of rental income and liquidated damages?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

This Tenancy began on June 1, 2011 on a fixed term tenancy until May 31, 2012 as shown in the submitted signed tenancy agreement. The monthly rent was \$1,750.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$875.00 was paid on May 7, 2011.

Both parties agreed that the Tenant gave written notice to end the tenancy and their forwarding address in writing on October 24, 2011. The notice gave a move out date of

October 31, 2011, but that the Tenant vacated and gave back possession of the rental on October 26, 2011.

The Landlord is seeking ½ months rent (\$875.00) for the period November 1-15, 2011 for loss of rent because the Tenant breached the fixed term tenancy agreement and failed to give adequate notice. The Landlord was able to re-rent the unit to new tenants on November 15, 2011 at a higher rent of \$1,825.00. The Tenant argues that the Landlord failed to properly mitigate their losses by not advertising the rental for November 1, 2011. The Landlord disputes this stating that the rental was re-advertised for November 1, 2011. The Tenant has provided copies of two advertisements that the Landlord only advertised the rental for November 15, 2011 and did not attempt to mitigate the losses for November 1 – 15, 2011.

The Landlord is also seeking liquidated damages cost of \$875.00. The Landlord relies on clause #5 of the signed tenancy agreement. The Tenant disputes that this is a penalty and not a genuine pre-estimate of the landlord's costs of re-renting the rental unit. The Landlord disputes this stating that the Tenants freely entered into the tenancy agreement with this clause.

### Analysis

I accept the Tenant's claim that the Landlord's failed to mitigate their losses for the November 1-15, 2011 time period (1/2 months rent) for the claim of \$875.00. In the absence of any evidence of mitigation from the Landlord, I accept the Tenant's evidence that the Landlord advertised the rental for November 15 as opposed to November 1, 2011. The Landlord's claim for ½ months rental loss is dismissed.

The Landlord has established a claim for liquidated damages of \$875.00. Clause #5 of the signed tenancy agreement clearly states that the Tenants agreed to the claim if they breached the fixed term tenancy. The Tenants have failed to establish that this claim for liquidated damages is a penalty. The Landlord's claim for the \$875.00 liquidated damages is granted.

The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$875.00 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$50.00.  
The Landlord may retain the \$875.00 security deposit.

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: January 20, 2012.

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Residential Tenancy Branch