



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 16, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord permitted to keep all or part of the tenants' security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on October 01, 2010. This started as a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,325.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$662.50 on September 30, 2010. The tenants vacated the rental unit on March 01, 2012 and gave the landlord their forwarding address in writing on this day. A move in and a move out condition inspection of the unit was completed with the landlord and tenants.

The landlord testifies that the tenants gave late notice to end their tenancy on February 04, 2012. This notice was effective on March 01, 2012. The landlord testifies that he made attempts to re-rent the unit by posting advertisements on Craig's list, posting the advertisement in the building and calling friends to see if anyone wanted to rent the unit. The landlord testifies that from these advertisements they conducted five viewings of the unit and eventually re-rented the unit on April 01, 2012. The landlord seeks to recover a loss of income for March, 2012 to the sum of \$1,325.00 from the tenants due to the late notice they gave the landlord to end their tenancy.

The landlord seeks an Order to keep the tenants security deposit to offset against the loss of rent and seeks to recover the \$50.00 filing fee paid for this proceeding.

Analysis

Under section 45(1) of the *Act*, a tenant of a month-to-month tenancy must give one clear months notice. This notice must be received by the landlord on the day before the day that rent is due. As rent was due for this unit on the first day of each month the latest the tenants could have given notice to end the tenancy for March 01, 2012 would have been January 31, 2012.

I find from the landlords undisputed testimony that the tenants failed to give notice to end their tenancy until February 04, 2012. The landlord attempted to mitigate the loss by advertising the unit for rent and could not re-rent the unit until April 01, 2012. Therefore the landlord has established their claim for a loss of rental income for March, 2012 to the sum of **\$1,325.00**.

I ORDER the landlord to keep the tenants security deposit of **\$662.50** in partial satisfaction of their claim for unpaid rent pursuant to s 38(4)(b) of the *Act*.

As the landlord has been successful in this matter I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants' pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 7(1) of the *Act* for the following amount:

Loss of rent	\$1,325.00
Filing fee	\$50.00
Less security deposit	(-\$662.50)
Total amount due to the landlord	\$712.50

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$712.50**. The order must be served on the respondents and is enforceable through the Provincial Court 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: May 18, 2012.

Residential Tenancy Branch