

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Service

The Landlord states that both the first and second named Tenants in the application were served by registered mail to the second named Tenant’s business address. The Landlord states that the first named Tenant’s residence is unknown.

Section 89 (1) of the Act provides as follows in relation to service:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I accept the Landlord’s evidence that the second named Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. AS the first named Tenant was not served at this person’s

place of residence, I find that the Landlord did not serve this Tenant in accordance with the Act and the application in relation to this person is dismissed with leave to reapply. The Tenants did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy agreement for an eight bedroom unit was signed on April 18, 2012 for a fixed term from May 7, 2012 to January 7, 2013. Rent of \$2,500.00 was payable monthly and no security deposit was taken by the Landlord. On April 21, 2012, the Tenant informed the Landlord that the tenancy would not be taken up. The unit was immediately advertised for rent with no rental amount included. The first four or five persons who contacted the Landlord were informed that the rent was \$2,500.00. The Landlord states that the unit could not be rented at this price as it was too high so they decided to reduce the rent to \$1,500.00 and called the other interested parties back with the reduced price however these persons had already found other rental units. The Landlord rented the unit at \$1,500.00 for six months starting May 22, 2012. The unit is in a community where very few rentals are available. The Landlord claims \$11,000.00.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the unit. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was

caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence of the Landlord, I find that the Tenant, by ending the fixed term tenancy before the end of the tenancy date, breached the tenancy agreement and caused the Landlord to suffer a loss. As the Landlord acted reasonably to mitigate losses by advertising the unit immediately, and given that the unit was re-rented for May 22, 2012, I find that the Landlord has substantiated a loss of 15 days rent to this date. Calculating the rent payable on a per diem basis of \$83.00, I find that the Landlord is entitled to **\$1,245.00** for the period May 7 to May 22, 2012. However, given that the rent for the next tenancy was significantly reduced after only a few inquiries and considering that this rental period was only for 6 months, I cannot find that the Landlord acted reasonably to mitigate any further losses and I dismiss the remainder of the Landlord's claim for compensation. I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,295.00**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,295.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: July 03, 2012.

Residential Tenancy Branch