



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; 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.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental; unit, and therefore, the landlord withdraws the application for an Order of Possession.

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 June 18, 2012 to the female tenant and in person to the male tenant. Mail receipt numbers were provided in the landlord's evidence. The female tenant is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act* and the male tenant is deemed to be served on the same day he was served by the landlord.

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 entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this tenancy started on February 01, 2012. This was a fixed term tenancy which was due to expire on January 31, 2013. Rent for this unit was \$1,100.00 per month and was due on the first day of each month in advance. The tenants' paid a security deposit of \$550.00 on January 04, 2012.

The landlord testifies that the tenants gave notice to the landlord to move out on June 01, 2012 with an effective date of June 18, 2012. The tenants paid \$660.00 into the landlords account on June 01, 2012 leaving an unpaid balance of \$440.00. The landlord testifies that the unit has not been re-rented until August 01, 2012 after approximately 10 viewings of the property. As this was a fixed term tenancy and the tenant broke the lease the landlord seeks to recover a loss of rent for July, 2012 of \$1,100.00.

The landlord testifies that there is clause in the tenancy agreement which notifies the tenants that in the event the tenants breach the terms of the contract the tenants agree to pay liquidated damages to the amount of \$300.00. These liquidated damages are directly related to all costs associated with re-renting the suite. The landlord testifies that he had to advertise the rental unit in the local paper and on internet sites for which the landlord was also charged due to the more visible advertising in order to re-rent the unit

quickly and for the landlords time involved in showing the unit and processing applications. The landlord therefore seeks to recover the sum of \$300.00 from the tenants.

The landlord seeks an Order to keep the tenants' security deposit of \$550.00 to offset against the landlords monetary claim and seeks to recover the \$50.00 filing fee from the tenants.

Analysis

I refer the parties to section 45(2) of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenants ended this fixed term tenancy in breach of s. 45(2) and the tenants have failed to appear at the hearing today to give evidence I find the landlord has established a claim for unpaid rent of **\$440.00** for June, 2012 and a loss of rental income for July, 2012 of **\$1,100.00**.

I further find the tenancy agreement notifies the tenants that the landlord will apply for liquidated damages should the tenants end the tenancy before the end of the fixed term. I find the amount the landlord has charged of \$300.00 to be reasonable to cover the

associated costs with re-renting the unit and therefore find the landlord is entitled to recover the sum of **\$300.00**.

The landlord is therefore entitled to keep the tenants security deposit of **\$550.00** pursuant to s. 38(4)(b) of the *Act*. This sum will be offset against the landlord's monetary award.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to section 67 ad 72(1) of the *Act* for the following amount:

Unpaid rent for June, 2012	\$440.00
Loss of rental income for July, 2012	\$1,100.00
Liquidated damages	\$300.00
Subtotal	\$1,840.00
Less security deposit	(-\$550.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,340.00

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 **\$1,340.00**. 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: July 10, 2012.

Residential Tenancy Branch