

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for a monetary order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Preliminary and Procedural Matter

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that the original tenancy agreement had a total of seven tenants which were limited companies and that only one company search had been completed prior to serving the tenants which proves the service address of only one of the limited companies. The landlord requested to proceed against the one limited company where service was proven. Therefore, six of the seven original respondents have been severed from the landlord’s application.

The landlord testified that the tenant was served by registered mail on October 20, 2012. A registered mail tracking number and receipts were submitted in evidence. Based on the undisputed testimony of the agent and the documentary evidence, I find the tenant was served in accordance with the *Act* on the fifth day after the registered mailing date, pursuant to section 90 of the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent under the *Act*?
- What should happen to the security deposit under the *Act*?

### Background and Evidence

The landlord testified that a fixed term tenancy agreement began on May 1, 2012 and was to expire on April 30, 2013. Monthly rent in the amount of \$3,500.00 was due on

the fifth day of each month. A security deposit of \$1,750.00 was paid by the tenant at the start of the tenancy.

The landlord testified that the tenant failed to provide notice that they would be vacating and only learned that they had vacated on September 23, 2012. The landlord is seeking \$12,350.00 comprised of the following:

Unpaid October 2012 rent	\$3,500.00
Unpaid November 2012 rent	\$3,500.00
Unpaid December 2012 rent	\$3,500.00
Unpaid January 2013 rent	\$3,500.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$14,100.00</b>
<i>(Less security deposit)</i>	<i>- (\$1,750.00)</i>
<b>TOTAL</b>	<b>\$12,350.00</b>

The landlord did not submit any documentary evidence regarding his attempts to re-rent the rental unit since the tenant vacated the rental unit. The landlord provided oral testimony that he posted ads online on two websites but did not run newspaper ads. The landlord stated the he posted ads once in October 2012 and once in December 2012, however, could not recall the dates or give more specific details.

The landlord stated that he attempted to reduce the rent in October 2012 to \$3,000.00 per month; however, the landlord had no evidence to corroborate his testimony such as a screen shot or printout of the internet posting. Since December 2012, the landlord stated that he has “given up” on trying to re-rent the rental unit and has not made further efforts to re-rent it as a result. The landlord believes the tenant owes all of the unpaid rent as they violated a fixed term tenancy agreement. The landlords stated that the tenant has not provided a forwarding address to date.

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for unpaid rent** – The landlord is claiming for four months of unpaid rent due to the tenant breaching a fixed term tenancy agreement. Section 7 of the *Act* states:

### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

[emphasis added]

As a result, even though the tenant violated a fixed term tenancy, the tenancy ended on September 23, 2012 when they vacated the rental unit. After that date, the landlord must prove that he did whatever was reasonable to minimize the damage or loss, in other words, show all attempts to secure new tenants and re-rent the rental unit.

The landlords testified that he has only advertised the rental unit on two websites, once in October 2012 and once in December 2012, and has since “given up” on trying to re-rent the rental unit. At the very least, I would have expected the landlord to run ads every week or so until the rental unit was re-rented and have documented proof that he attempted to reduce rent so that at least a portion of his loss could be minimized. The landlord failed to provide any supporting evidence that he reduced the rent and admitted to “giving up” on re-renting the rental unit. As a result, **I find** the landlord has failed to do whatever was reasonable to minimize the damage or loss.

**I find** that due to the tenants breaching section 45 of the *Act* by failing to provide proper notice under the *Act*, the landlord is entitled to October 2012 rent in the amount of **3,500.00**. However, **I do not accept** that posting the rental unit twice since October 2012 is a reasonable attempt to re-rent the rental unit. **I find** the landlord is not entitled to further compensation as the landlord failed to comply with section 7 of the *Act* which requires him to do whatever was reasonable to minimize the damage or loss. Therefore, **I dismiss** the remainder of the landlord's claim for the other three months of unpaid rent due to insufficient evidence that the landlord attempted to minimize the damage or loss, without leave to reapply.

As the landlord has partially successful with his application, **I grant** the landlord the recovery of the half of the \$100.00 filing fee in the amount of **\$50.00**.

The tenant's security deposit of \$1,750.00 has accrued \$0.00 in interest since the start of the tenancy.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Unpaid October 2012 rent	\$3,500.00
½ of filing fee	\$50.00
<b>Subtotal</b>	<b>\$3,550.00</b>
<i>(Less security deposit)</i>	<i>- (\$1,750.00)</i>
<b>TOTAL</b>	<b>\$1,800.00</b>

Conclusion

I find that the landlord has established a total monetary claim of \$3,550.00. I authorize the landlord to retain the full security deposit of \$1,750.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,800.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2013