



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNR, MNDC, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, for liquidated damages, late fees and for the recovery of the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of his claim.

The landlord sent a copy of his application and the notice of hearing to the tenant by registered mail on February 21, 2013, to the forwarding address provided by the tenant. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Did the tenant end the tenancy prior to the end date of the fixed term? Is the landlord entitled to a monetary order for loss of income, for liquidated damages, late fees and for the recovery of the filing fee.

Background and Evidence

The landlord testified that the tenancy started on October 05, 2011 for a fixed term of one year. Prior to moving in, the tenant paid a security deposit of \$1,350.00 and a pet deposit of \$1,350.00. At the end of the fixed term the parties entered into another fixed term of 24 months at a reduced rent of \$2,500.00. The tenancy ended on February 01, 2013 and a new tenant was found for February 22, 2013.

The landlord filed a copy of the tenancy agreement which contains clauses regarding liquidated damages and late fees. By signing the agreement, the tenant agreed to pay \$1,350.00 in liquidated damages in the event that she ends the tenancy prior to the end date of the fixed term and also agreed to pay late fees. The landlord also filed a copy of a financial statement that indicates the months that rent was paid late.

The landlord is claiming the loss of income he suffered in February in the amount of \$1,875.00, liquated damages in the amount of \$1,350.00 and \$400.00 for late fees.

Analysis

By ending the tenancy prior to the end date as specified in the tenancy agreement, the tenant breached this agreement. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss. In this case the landlord made attempts to mitigate his losses and was therefore successful in finding a tenant for a portion of February 2013. Accordingly, I find that the landlord is entitled to loss of income that he suffered for February in the amount of **\$1,875.00**.

By signing the tenancy agreement, the tenant agreed to pay liquidated damages of \$1,350.00 in the event of a breach of the term of the tenancy agreement. Therefore I find that the landlord is entitled to his claim of **\$1,350.00**. The tenant also agreed to pay late fees. The landlord has filed documentary evidence to support his claim of **\$400.00** in late fees over the term of the tenancy. Therefore I award the landlord this amount. Since the landlord has proven his case, he is also entitled to the filing fee of **\$50.00**.

Overall the landlord has established a claim of **\$3,675.00**. The landlord currently has in his possession the tenant's security and pet deposits of \$2,700.00. I order that the landlord retain the deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$975.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of **\$975.00**.

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 09, 2013

Residential Tenancy Branch