



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
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 the loss of income she suffered when the tenant ended the fixed term tenancy prior to the end date, for liquidated damages and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The landlord sent a copy of her application and the notice of hearing to the tenant by registered mail on December 21, 2012, to the forwarding address provided by the tenant and 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

Is the landlord entitled to a monetary order for loss of income, liquidated damages and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on April 01, 2012 for a fixed term of one year. The monthly rent was \$975.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$487.50. The landlord filed a copy of the tenancy agreement. This agreement contains a clause stating that in the event the tenant ends the tenancy prior to the end of the fixed term, the tenant would be required to pay \$300.00 towards administrative costs of re renting the unit.

On or about October 14, 2012, the tenant gave the landlord notice to end the tenancy effective October 31, 2013. The landlord advertised the availability of the rental unit and found a tenant for December 01, 2012. The landlord is claiming the loss of income she suffered for the month of November (\$975.00), liquidated damages (\$300.00) plus the filing fee (\$50.00).

Analysis

Section 45(2) of the *Residential Tenancy Act* states that 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 as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

The tenant moved out October 30, 2012, prior to the end date of March 31, 2013. Therefore the landlord is entitled to any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Despite making efforts to find a new tenant, the landlord was unsuccessful in finding a tenant for November 2012 and therefore suffered a loss of income in the amount of \$975.00.

By signing the tenancy agreement, the tenant agreed to pay \$300.00 as liquidated damages. Therefore I find that the landlord is entitled to his claim of \$300.00. The landlord has proven her case and is therefore entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of \$1,325.00. I order that the landlord retain the security deposit of \$487.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$837.50. 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 for the amount of **\$837.50**.

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: March 19, 2013
Amended: May 17, 2013

Residential Tenancy Branch

