



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order pursuant to Section 67 for loss of income, liquidated damages and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

The landlord sent a copy of her application and the notice of hearing to the tenant by registered mail on March 28, 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**

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

### **Background and Evidence**

On February 15, 2013, the parties entered into a fixed term tenancy agreement with an effective start date of April 01, 2013 and an end date of April 01, 2014. The rent was set at \$1,125.00 due on the first of each month. The tenant paid a security of \$562.50. The landlord filed a copy of the tenancy agreement. A clause in the agreement requires the tenant to pay \$150.00 if she moves out prior to the end date of the fixed term.

On March 08, 2013, the tenant informed the landlord that she was not going to be moving into the rental unit. The landlord started advertising the availability of the unit and filed copies of the rental ads. Despite her efforts, a tenant was not found for April 01, 2013. The landlord has applied for a monetary order for the loss of income that she suffered for April 2013, for liquidated damages of \$150.00 and for the filing fee \$50.00.

### **Analysis**

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when they signed a contract on February 15, 2013. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to rental income for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate her losses by advertising the availability of the suite but did not find a tenant for April and therefore suffered a loss of income for this month.

*Residential Tenancy Policy Guideline #3* states that 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 the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that she lost for the month of April 2013 in the amount of \$1,125.00. Since the tenant signed the lease, in agreement of the terms of the lease, she must also pay \$150.00 for liquidated damages. The landlord has proven her case and therefore I find that the landlord is entitled to 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 \$562.50 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 \$762.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The landlord may retain the security deposit and I grant the landlord a monetary order in the amount of **\$762.50**.

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: June 19, 2013

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Residential Tenancy Branch