



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNR, MNDC, FF

Introduction

This was an application by the landlord for a monetary order for unpaid rent / loss of revenue, and to retain the security deposit in partial satisfaction of their monetary claim, and to recover the filing fee.

I accept the landlord's evidence that despite the tenant having been personally served with the application for dispute resolution and notice of hearing on January 14, 2014 in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenants did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The relevant undisputed testimony in this matter is that the tenancy started May 01, 2013 and ended on December 31, 2013. The tenancy agreement was between the 2 tenants and the landlord. The monthly rent payable under the tenancy agreement was \$1650.00. At the start of the tenancy the landlord collected a security deposit of \$825.00 which the landlord retains in trust. The landlord submitted evidence that on December 10, 2013 the tenants provided an e-mail stating they were ending the tenancy December 31, 2013. The landlord claims that the lack of written Notice to End the tenancy in accordance with the Act caused them a loss of revenue for January

2104, despite accepting a new tenant for January 01, 2014. Therefore, the landlord seeks loss of revenue equivalent to one month's rent for January 2014.

The landlord testified that soon after the tenant advised by e-mail they were vacating they posted an advertisement online on several sites to secure a new tenant for January 01, 2014 for \$1450.00, but were unsuccessful. As a result, the landlord did not advertise into the month of January 2014 and accepted a (sole) new tenant for January 01, 2014 for \$725.00 per month with the knowledge that the new tenant was at liberty to acquire another occupant - providing an additional amount of rent.

Analysis

I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, **Section 7** of the Act provides as follows:

7. 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.
- 7(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.

Under the Act, the party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy the tests established by Section 7 of the Act.

In this case, I find the landlord made reasonable efforts to minimize their losses by advertising the rental unit until the tenant vacated, thereby meeting the second part of the test established in section 7(2). The landlord testified that they chose to accept a new tenant for the month of January 01, 2014 at a reduced rent of \$725.00 as it was unlikely they would secure a fuller tenancy. I accept the landlord chose to mitigate their losses in part, rather than incur greater losses. As a result, I grant the landlord loss of revenue for January 2014 in the advertised amount of \$1450.00 and they are further entitled to their filing fee of \$50.00, in the aggregate of \$1500.00. I *deduct from the landlord's award* the \$725.00 rent collected by them for January 2014, with a residual award to the landlord in the amount of **\$775.00**.

In this application the landlord requested the retention of the entire security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has only been partially granted it is appropriate that I order the balance of the tenant's security deposit returned to the tenant.

I Order that the landlord retain \$775.00 from the security deposit of \$825.00 being held by them, and I grant the tenant an Order under Section 67 of the Act for the balance due of **\$50.00**.

Conclusion

The tenant is being given a Monetary Order in the amount of **\$50.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: April 23, 2014

Residential Tenancy Branch

