



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAZAWEST SERVICES INC.
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 orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the male tenant agreed he received the Application for Dispute Resolution by registered mail. It was also verified online that the female tenant was successfully served by registered mail on February 25, 2015 although she did not attend the hearing. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Is the landlord entitled to a Monetary Order for rental loss and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 1, 2014 on a fixed term lease expiring June 30, 2015, a security deposit of \$475 was paid and rent was \$950 a month. It is undisputed that the tenant vacated on January 31, 2015 after giving a two month notice to the landlord. The landlord claims \$950 in lost rent for February 2015 plus \$26.25 NSF fee and \$25 late fee. The landlord said they were unable to re-rent the unit until April 2015.

The tenant said they had understood their obligations for rental loss until the end of June 2015; however their relationship had ended and neither could afford the rent alone so they chose to give notice. They said the landlord had not kept them up to date on re-

renting and the Application was the first indication they had of still owing rent for February; they said that if the landlord had called, they could have avoided the extra fees. The tenant did not dispute the amount owing. The tenant said that the landlord still had the security deposit in trust and they had not authorized any deductions.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 45(2) of the Act provides that a tenant's Notice to End a fixed term tenancy is not effective until the end of the fixed term which is June 30, 2015. I find the weight of the evidence is that the landlord explained the rental obligation to the tenant for breaking the lease and he understood it.

The landlord has an obligation to mitigate rental loss and damages and the evidence is that they did this by re-renting for April 1, 2015. I find the tenant responsible for rent for February 2015 as claimed by the landlord plus \$25 in late fees. Although the landlord also claimed \$26.25 for NSF fees, I find the Residential Tenancy Regulation section 7(1) (d) limits this fee to \$25 so \$25 is awarded for the return of the tenant's cheque.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below for which the tenants are jointly and severally liable. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees.

Calculation of Monetary Award:

February 2015 rental loss	950.00
Late fee and NSF charge (25+25)	50.00
Filing fee	50.00
Less security deposit (no interest 2014-15)	-475.00
Total Monetary Order to Landlord	575.00

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: April 15, 2015

Residential Tenancy Branch

