



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

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 monetary order for loss of income for January 2009, due to the tenant giving inadequate notice to end tenancy pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Is the landlord entitled to a monetary order to recover loss of income for half the month of January 2009?
- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?
- Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

Based on the sworn testimony of both parties the facts are as follows:

The tenancy started on May 01, 2006 for a fixed term of one year and then continued on as a month to month tenancy. Prior to moving in, the tenant paid a security deposit of \$950.00. The monthly rent was set at \$1900.00 due in advance on the first day of each month.

On December 01, 2008, the tenant gave the landlord notice to end tenancy effective January 15, 2009 and moved out on January 14, 2009, without paying rent for January.

The landlord filed this application on January 16, 2009 and has applied to retain the security deposit towards rent for January. The landlord testified that attempts were made to re rent the suite by advertising and a tenant was found for March 01, 2009, but moved in early by making an agreement with the landlord to paint the suite.

The tenant stated that due to problems with the septic tank and mould in the home, the health of the occupants was compromised and the tenant decided to move out in the interest of the welfare of the tenant's family members. The tenant stated that notice was given on December 01, 2008 as the previous day was a Sunday and the office that manages the property was closed.

Analysis

Section 45 of the *Residential Tenancy Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case, rent was due in advance on the first of the month and the tenant failed to give notice prior to the day rent is due. The landlord attempted to mitigate the landlord's losses by advertising the availability of the rental unit and was unsuccessful in finding a tenant prior to January 31, 2009 which is the effective date of the notice given on December 01, 2008. Hence I find that the landlord is entitled to rent for the entire month of January in the amount of \$1900.00 and the filing fee of \$50.00. I order that the landlord retain the security deposit and interest of \$982.57 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 \$967.43. 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 in the amount of **\$967.43**.

Dated February 25, 2009.

Dispute Resolution Officer