

DECISION AND REASONS

Introduction

This hearing was convened in response to an application filed by the landlord seeking money owed or compensation for damage or loss under the Residential Tenancy Act (the Act), regulation or tenancy agreement, and to keep all or part of the security deposit in satisfaction of the claim. The landlord is also claiming to recover the filing fee for this application.

I accept that despite having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

Specifically, the landlord's claim is for one half month's rent in the amount of \$375 as loss of revenue due to insufficient notice given by the tenant

Issue(s) to be decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began April 01, 2008 and ended February 25, 2009. Rent was payable at \$750 per month. At the outset of the tenancy the landlord collected a security deposit of \$375, which the landlord retains pending the outcome of this hearing.

The tenant caused a Notice to Vacate be delivered to the landlord, effective February 28, 2009. The Notice was signed and dated by the tenant on February 05, 2009 and stamped received by the landlord on the same date. The landlord claims that the notice was not in compliance with the Act, and was insufficient notice to enable the landlord to rent the unit for March 01, 2009. The landlord's evidence is that the landlord rents out over 280 suites, and therefore advertises daily and in a number of mediums, and typically has vacant units for any given month available to rent on the 1st. or 15th. of each month. For March 1st, 2009 the landlord claims they had six (6) to seven (7) vacant suites available to rent. Rental candidates chose to rent vacant suites over occupied suites, thus the tenant's suite did not rent for March 1st 2009. The suite was able to be re-rented for March 15, 2009.

Analysis

It must be emphasized that in order to claim for loss (in this matter, for loss of revenue) under the *Act*, the party claiming the loss (landlord) bears the burden of proof.

Moreover, the applicant must satisfy each component of the test below:

1. Proof that the loss exists,
2. Proof that this loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In summary, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I am satisfied and accept that the tenant did not provide proper notice in compliance with Section 45 of the *Act*. I am further satisfied and accept that the landlord's loss exists, as the rental unit was not again rented until the middle of March 2009. As well, I accept the landlord's evidence verifying the actual monetary amount of the loss of revenue and that the landlord shows that reasonable steps were taken to mitigate the loss incurred. However, I find that the loss of revenue does not stem directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant: that this loss happened solely because of the actions or neglect of the tenant in violation of the *Act* or agreement. I find that the nature of the landlord's business and the availability of vacant and available suites were at the root of the landlord's inability to rent out the tenant's suite for March 1, 2009.

Therefore, I decline to award the landlord loss of revenue for the first half of March 2009 in the amount of \$375. I further decline to award the filing fee for this application, and effectively dismiss the landlord's application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit with interest; I so order and I grant the tenant a Monetary Order in the amount of **\$379.23**. If necessary, this order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application is dismissed.

The tenant is granted a Monetary Order in the amount of **\$379.23**.

Dated June 02, 2009.