



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, A Monetary Order for damage or loss under the *Act*, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 17, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on July 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent and building manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered



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Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy was due to start on July 01, 2009. This was a fixed term tenancy until June 30, 2010. The tenant signed the tenancy agreement on June 16, 2009 and the tenant paid a security deposit of \$975.00 on the same day.

The tenant sent the landlord a letter dated June 30, 2009 stating that she would not be able to move in due to health reasons and her financial burden for these. The tenant requested the return of her security deposit and provided her forwarding address.

The landlord has provided the tenancy agreement which clearly states that the landlord will charge the tenant \$300.00 in liquidated damages if the one year fixed term tenancy ends before the due date of June 30, 2010. The landlord has made numerous attempts to re-rent the unit for July 2009 but was unsuccessful. It has since been re-rented for August 01, 2009.

There is an additional clause in the tenancy agreement which states that the tenant will be charged a late fee of \$20.00 for any month the rent is not paid by the due date. The landlords' agent testifies that the tenant did not pay rent for July, 2009 of \$1,950.00.



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Analysis

I find that the tenant did sign the tenancy agreement and as such entered into an agreement for the rental of this unit. Section 7 of the Act states:

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.

(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.

I find that the landlord made every attempt to re-rent the unit to minimize their loss and as such have incurred a loss of revenue for July, 2009 of \$1,950.00. Therefore, I find the tenant has breached the tenancy agreement with the landlord and as such the landlord is entitled to recover the loss of revenue from the tenant for July, 2009 rent.

I also find the landlord is entitled to recover \$300.00 in liquidated damages because the tenant ending the tenancy agreement before the end of the fixed term without any notice. I find the tenant is also required to pay a late fee of \$20.00 as she did not pay the rent when it was due on July 01, 2009.

As the landlord has been successful with their application I find they are entitled to recover the filing fee of \$50.00 from the tenant.



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I Order, pursuant to Section 38, that the landlord may retain the full security deposit in partial satisfaction of their claim for the outstanding rent. A Monetary Order has been issued for the following amount:

Loss of revenue for July 2009	\$1,950.00
Liquidated damages	\$300.00
Filing fee	\$50.00
Less security deposit	(-975.00)
Total amount due to the landlord	\$1,345.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,345.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: October 06, 2009.

Dispute Resolution Officer