

## Decision

Dispute Codes: MNR, MNSD

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to recover rent for July?

Did the landlord waive his right to make a claim against the tenant for unpaid rent?

### Background and Evidence

The tenancy started on June 1, 2009 and was set to run for a fixed term, ending on May 31, 2010. Rent was set at \$1,600.00 per month and an \$800.00 security deposit was paid. The tenant failed to pay rent on July 1 and on July 3 the landlord served the tenant with a 10 day notice to end tenancy. The parties had a meeting on July 7 and although there is some discrepancy over whether the tenant offered to pay rent at that time, the parties agreed that they entered into a written agreement which was signed by both and reads as follows, names of the parties having been omitted to protect their privacy upon publication of this decision:

It is agreed between the tenant [O.C.] and the landlord [C] that the rent in the amount of \$1,600.00 will be paid on or before July 13, 2009. If the rent is not paid by this date, the tenant will vacate the home immediately and/or the arbitration process will be started.

Both parties agree that the tenant will vacate the home by July 31, 2009 at 1:00 pm and the fixed term tenancy agreement will be null and void on this date.

The parties agreed that the tenant vacated the rental unit on July 14. The landlord initially had made application for rent for the balance of the fixed term, but at the hearing reduced his claim to unpaid rent for July. The tenant took the position that the July 7 agreement released her from responsibility for the rent. The tenant also argued that the landlord had re-rented the rental unit approximately 1 week after she vacated and therefore was not entitled to recover rent for a period of time in which the unit was

occupied by other tenants. The landlord testified that the rental unit was not re-rented until August 1.

### Analysis

While it may have been the belief of the tenant that she was released from responsibility for the rent for the month of July, I find that the July 7 agreement cannot be interpreted as a release. I accept the landlord's testimony that the unit was not re-rented until August 1. Although the tenant claimed the unit was re-rented within one week of the time she vacated, the fact that the landlord did not make application until July 23 and at that time applied for rent for July as well as subsequent months leads me to find that the landlord had not on July 23 re-rented the unit. I find on the balance of probabilities that the landlord did not re-rent the unit until August 1.

I find the tenant is responsible for rent for the month of July and I grant the landlord \$1,600.00. I order the landlord to retain the \$800.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is awarded \$1,600.00 and may retain the security deposit.

Dated November 10, 2009.