

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

### Issues(s) to be Decided

1. Is the landlord entitled to unpaid rent for December 2009?
2. Is the landlord entitled to retain the security deposit in partial satisfaction of the unpaid rent?

### Background and Evidence

I heard undisputed evidence from the parties, as follows. The residential property is comprised of two rental units. The tenant had been residing in one rental unit (#216) for approximately 5 ½ years. On May 1, 2009 the tenant and the landlord entered into a tenancy agreement for the adjacent unit (#218) for a tenancy set to commence June 1, 2009. The tenant did not occupy unit 218; rather, unit 218 was occupied by sub-tenant and the tenant collected rent from the sub-tenants starting June 1, 2009. This application relates to rent owing to the landlord for unit #218 only and 218 is herein referred to as the rental unit.

The tenancy agreement for the subject rental unit provides that the tenant was required to pay the landlord \$650.00 on the 1<sup>st</sup> day of every month for a fixed term of one year. The tenant also paid a \$325.00 security deposit.

It was not in dispute that the tenant did not pay rent to the landlord for December 2009. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail sent December 11, 2009. The landlord determined the 10 Day Notice issued in December 2009 contained errors and issued another 10 Day Notice January 4, 2010. Upon receipt of the 10 Day Notice on January 4, 2010 the tenant replied to the landlord via email and facsimile and agreed to end the tenancy effective January 5, 2010.

With this application the landlord is seeking to recover unpaid rent of \$650.00 for the month of December 2009. The landlord explained that a new tenancy agreement was entered into with the sub-tenants as of January 11, 2010 and the landlord did not incur a loss of rent for January 2010.

The tenant explained that previous sub-tenants vacated the rental unit in October 2009 without paying rent. The tenant entered into a tenancy agreement with new sub-tenants in November 2009 and collected rent from them. The tenant submitted that the loss of rent from the previous sub-tenants resulted in the tenant not paying rent for December 2009. The tenant intended to pay the outstanding rent using the January 2010 rent to be collected from the sub-tenants but the sub-tenants would not pay him. The tenant submitted the sub-tenants did not pay him at the instructions of the landlord.

The landlord denied that they instructed the sub-tenants to withhold rent from the tenant or to pay them directly.

### Analysis

The issue to be determined in this case is whether the landlord was entitled to collect rent from the tenant for the month of December 2009. Upon review of the tenancy

agreement and upon hearing from both parties, I find the landlord was entitled to collect rent from the tenant in the amount of \$650.00 on December 1, 2009. I was not presented with any legal reason to suggest the tenant had the right to withhold rent from the landlord for the month of December 2009. Having heard the landlord has not yet received payment of rent for December 2009 I am satisfied the landlord has suffered a loss of rent and that this loss is a result of the tenant's violation of the tenancy agreement.

In light of the above, I award the landlord the amount sought by the landlord with this application. I also authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent.

With this decision I provide the landlord with a Monetary Order in the amount of \$375.00 including the filing fee (\$650.00 rent - \$325.00 security deposit + \$50.00 filing fee). The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord was successful in this application. The landlord has been authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$375.00 to serve upon the tenant.

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: June 24, 2010.

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Dispute Resolution Officer