

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:43 a.m. in order to enable the tenant to connect with this hearing. The female landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on November 29, 2010 she sent a copy of the dispute resolution hearing package to the tenant by registered mail at the mailing address he had provided her when he vacated the rental unit on September 19, 2010. She provided a Canada Post Tracking Number to confirm this mailing. The male landlord testified that the tenant confirmed that he had received the hearing package when the tenant called him after receiving that hearing package. I am satisfied that the landlord served the hearing package to the tenant in accordance with the *Act*.

At the hearing, the landlord amended the spelling of the landlords' corporate name which I have revised as indicated above.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover their filing fee?

### Background and Evidence

This month-to-month tenancy commenced on June 1, 2009. Monthly rent was set at \$1,700.00, payable in advance on the first of the month. The landlords continue to hold the tenant's \$860.00 security deposit paid on May 27, 2009.

The landlords applied for a monetary award of \$4,520.00. This amount included \$1,700.00 in unpaid rent for each of August and September 2010, unpaid rent of \$850.00 for the first two weeks of October 2010, and unpaid utilities of \$270.00. The landlord requested the unpaid utility payment because the tenant had failed to comply with the requirement that he fill the oil tank to the level it was at when he moved into this rental unit in June 2009.

The landlord testified that the tenant gave no formal notice to end this tenancy, but met with the landlord on September 19, 2010, to conduct the joint move-out condition inspection. The landlord said that she was unable to rent the premises to another tenant until October 15, 2010, and due to the lack of notice from the tenant requested a monetary award of half the October 2010 rent to compensate for this lack of proper notice. She said that the new tenant is paying the same \$1,700.00 monthly rental that existed in this tenancy.

In addition, the landlord requested recovery of the \$50.00 filing fee for this application and authorization to retain the tenant's security deposit in partial satisfaction of the monetary award requested.

#### Analysis

Based on the undisputed evidence presented by the landlord, I find that the landlord is entitled to a monetary award of \$1,700.00 in unpaid rent for each of August and September 2010.

With respect to the landlords' claim for unpaid rent for October 2010, I am satisfied that the tenant's failure to provide written notice of his intention to end this tenancy contravened the *Act* and made him responsible for paying rent in October 2010. I am also satisfied that the landlords have complied with the requirement established in section 7(2) of the *Act* to take measures to mitigate the tenant's liability for unpaid rent in October 2010 by renting the premises to another tenant as of October 15, 2010. I find that the landlords are entitled to a monetary award in the amount of \$768.40. This amount reflects the landlords' loss of rent from October 1, 2010 until October 14, 2010, 14 of the 31 days of that month, or 45.2% of that month.

I allow a monetary award of \$267.43 for unpaid utilities, an amount which matches with the documents entered into evidence by the landlords.

I allow the landlords to retain the tenant's \$860.00 security deposit plus interest to partially satisfy the monetary award issued in this decision. No interest is payable over this period.

Since the landlords have been successful in this application, I allow them to recover their filing fee for this application from the tenant.

### Conclusion

I issue a monetary Order in the landlords' favour in the following terms which provides the landlords with recovery of unpaid rent and utilities arising out of this tenancy and the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Unpaid August 2010 Rent	\$1,700.00
Unpaid September 2010 Rent	1,700.00
Unpaid Rent- October 2010	768.40
Unpaid Utilities	267.43
Less Security Deposit	-860.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$3,625.83</b>

I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.