



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MND MNR FF

## **Introduction**

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damages to the rental unit, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

## **Issue(s) to be Decided**

The issues to be decided are whether the Landlord is entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit, for liquidated damages for ending the fixed term tenancy prematurely, and to recover the filing fee for the cost of this Application for Dispute Resolution.

## **Background and Evidence**

The Landlord and the Tenant both stated that this was a fixed term tenancy that began on November 01, 2007 and was to end on October 31, 2008; that the Tenant was required to pay monthly rent of \$2,200.00; and that the Tenant paid a security deposit of \$1,100.00 on November 01, 2007.

The Landlord and the Tenant agree that the Tenant verbally advised the female Landlord, on July 20, 2008, that she wished to end the tenancy on September 01, 2008. The female Landlord advised the Tenant that she would have to pay \$3,300.00 and authorize the Landlord to retain the security deposit if she wished to end the tenancy early. The Tenant paid her rent for August and did not sign a mutual agreement to end tenancy at that time.

The Landlord and the Tenant agree that the Tenant had a conversation with the male Tenant on August 15, 2008, who stated that he would be willing to end the tenancy on September 01, 2008 and that he would not charge her rent for that month if he was able to find new tenants for September 01, 2008. He advised her that he would send her a letter outlining that agreement, which he did not do.

The Landlord and the Tenant agree that the Tenant faxed a mutual agreement to end tenancy, which she signed, that indicated she wished to mutually end the tenancy on September 15, 2008. At the same time, the Tenant faxed a letter to the Landlords advising them that they could retain the security deposit in lieu of rent from September 01, 2008 and September 15, 2008. The Landlord did not sign the mutual agreement or return it to the Tenant.

The Landlord is seeking compensation, in the amount of \$1,100.00 for the unpaid rent due from September 16, 2008 to September 30, 2008.

The Landlord is seeking compensation for loss of revenue for rent in October. He stated that he was unable to find a new tenant for October 01, 2008 as he was unable to advertise and show the rental unit due to the cleanliness of the unit. He stated that he did not advertise the rental unit September 11, 2008 until after it had been cleaned. He stated that he did not advertise the rental unit earlier, as he did not have permission from the Tenant to show the rental unit. The Tenant stated that the Landlord did have permission to access the rental unit for the purposes of showing it to perspective tenants.

Although it was not submitted in evidence prior to the hearing, the Landlord and the Tenant agree that their tenancy agreement indicates that the Tenant agreed to pay a "lease breaking fee" of \$500.00 in the event that she ended the fixed term tenancy early.

The Landlord is seeking compensation, in the amount of \$203.01, for utility services due to the Municipality of \_\_\_\_\_. The Tenant stated that she is not responsible for paying the fee for water services or garbage collection. The Landlord did not submit the tenancy agreement prior to the hearing.

The Landlord is seeking compensation, in the amount of \$798.00, for cleaning the rental unit. The Tenant submitted a bill from the cleaning company used by the Landlord, that shows the rental unit was cleaned on September 9<sup>th</sup>, 10<sup>th</sup>, and 13<sup>th</sup>. The Landlord agreed that the rental unit was cleaned on those dates. The Tenant stated that she intended to return to the rental unit on September 10, 2008 to complete her cleaning of the rental unit, but when she arrived she found other people cleaning the rental unit.

The Landlord is seeking compensation, in the amount of \$141.46 for the cost of replacing light bulbs in the rental unit. The male Landlord stated that he replaced approximately 25 light bulbs in the rental unit. The Tenant stated that there were only one or two light bulbs burned out at the end of the tenancy, and she would have replaced them when she cleaned the rental unit if there had not been cleaners in the unit when she returned on September 10, 2008.

### **Analysis**

I find that the Landlord and the Tenant had a fixed term tenancy agreement that was scheduled to end on October 31, 2008.

Although the Tenant did provide written notice of her intent to vacate the rental unit on September 15, 2008, she attempted to end the tenancy earlier than the date that is specified in her fixed term tenancy agreement, which is not compliant with section 45 of the *Act*. The Tenant was unsuccessful in her attempts to have the Landlord agree, in writing, to mutually end the tenancy.

I find that the Tenant did not end this tenancy in accordance with the *Act*. I therefore find that this tenancy effectively ended on September 15, 2008, when the Tenant vacated the rental unit. I find that the Landlord did not have a right to occupy or possess the rental unit prior to September 15, 2008, as he did not agree to end the tenancy prior to September 15, 2008 and he had no reasonable expectation that the Tenant had vacated the rental unit prior to September 15, 2008.

I find that the Landlord is entitled to compensation for unpaid rent between September 16, 2008 and September 30, 2008, in the amount of \$1,100.00, as the Tenant did not end this tenancy in accordance with the *Act*. I find that the improper notice provided by

the Tenant prevented the Landlord from renting the rental unit for September 15, 2008, as there was no clear understanding regarding the end date of this tenancy.

Section 7(2) of the *Act* stipulates that a landlord or a tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not mitigate his losses by making reasonable efforts to find new tenants for the rental unit and I find, therefore, that he is not entitled to compensation for loss of revenue for October of 2008.

In reaching this conclusion I was strongly influenced by the fact that the Landlord did not advertise the rental unit until September 11, 2008. I do not accept his argument that he did not advertise earlier because he did not have permission to show the unit, as he had the right to access the unit pursuant to section 29 of the *Act*. I also do not accept his argument that he was unable to show the unit because it was too dirty, as landlords routinely show suites prior to them being vacated and properly cleaned by tenants.

I find that the Tenant must compensate the Landlord, in the amount of \$500.00, for ending the fixed term tenancy early. In reaching this conclusion I was strongly influenced by the Tenant's admission that she agreed to pay a lease breaking fee in this amount if she ended the fixed term tenancy early. As the evidence shows that she did end the fixed term tenancy early, she is liable to pay the lease breaking fee.

I find that the Landlord submitted insufficient evidence to establish that the Tenant is required to pay for water or garbage pick-up. In circumstances where two parties disagree on the terms of their agreement, the onus is on the person who is claiming for damages to prove the terms of the agreement. On this basis I dismiss the Landlords' application for compensation for utility services due to the Municipality of \_\_\_\_\_.

Section 37(2)(a) of the *Act* stipulates that a tenant must leave the rental unit reasonably clean at the end of the tenancy. I find that the rental unit was left in clean condition when the tenancy ended on September 15, 2008, albeit it was cleaned by the Landlord. I find that the Landlord acted prematurely when he hired cleaners to clean the rental unit prior to September 15, 2008, as the tenancy had not yet ended. I find, therefore, that the Landlord is not entitled to compensation for the cost of the cleaning, as the Landlords' actions denied the Tenant the opportunity to clean the rental unit prior to the end of her tenancy.

I find that the Landlord submitted insufficient evidence to establish that there were 25 light bulbs burned out at the end of the tenancy. As the Tenant did not agree that there were a significant number of light bulbs burned out at the end of the tenancy, I find that the onus was on the Landlord to submit evidence to corroborate his testimony. As it has only been established that a few light bulbs were burned out at the end of the tenancy, which constitutes reasonable wear and tear, I dismiss the Landlords' application for compensation for replacing light bulbs.

I find that the Landlords' application has some merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$1,650.00, which is comprised on \$1,100.00 in loss of revenue from September of 2008, \$500.00 in liquidated damages for ending the tenancy early; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,650.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: December 04, 2008