

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing, the landlord withdrew her application for an order of possession as the tenants had already moved out on March 24, 2009. I therefore dismiss the landlord's application for an order of possession.

On September 7, 2008, the landlord collected a security deposit from the tenant in the amount of \$1000.00. The tenancy began on October 1, 2008 with a fixed term ending October 1, 2009. Rent in the amount of \$2200.00 was payable in advance on the first day of each month. On February 28, 2009, the tenants wrote to the landlord stating that they had found asbestos in the attic and were therefore moving out on March 31. The tenants failed to pay rent in the month of March, 2009 and on March 3, the landlord served the tenants with a notice to end tenancy for non-payment of rent. On March 24, 2009, the tenants moved out of the rental unit.

The landlord is seeking to recover from the tenants outstanding rent for the month of March in the amount of \$2200.00. The tenants did not dispute that they had not paid this amount of outstanding rent. I therefore allow a claim of \$2200.00 for outstanding rent.

The landlord is also seeking to include a claim for loss of income for the month of April in the amount of \$2200.00. The landlord said that the advertising to re-rent the unit started in February but she was only able to re-rent it for May 1, 2009. The tenants said that they are not responsible for the April rent as they had to "break" the lease and leave the rental unit due to their discovery of asbestos in

the attic. The tenants submitted a report by Sure Hazmat and Testing dated February 13, 2009 stating that a sample submitted by the tenants was tested to contain asbestos. The tenants maintained that the submitted sample was taken from the attic insulation. I find no evidence to confirm that the sample was extracted from the attic insulation of the rental unit. I have therefore given no weight to the report by Sure Hazmat and Testing dated February 13, 2009 and I have not relied upon such evidence for this hearing. Based on the above, I find that the tenant has not proven that the landlord has failed to comply with a material term of the tenancy agreement. Furthermore, even if the landlord has failed to comply with a material term of the tenancy, the tenant did not allow a reasonable amount of time for the landlord to correct the situation before ending tenancy as per requirements of Section 45 of the *Act*. Based on the above, I allow the landlord's claim for a further \$2200.00.

As for the monetary order, I find that the landlord has established a claim for \$2200.00 in unpaid rent and \$2200.00 in loss of income. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$1004.75 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3445.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.