

DECISION AND REASONS

Dispute Codes: MN SD FF

This hearing dealt with (a) an application by the landlord for a monetary order, an order allowing retention of the security deposit and pet damage deposit and recovery of the filing fee; and (b) an application by the tenant for return of her security deposit and pet damage deposit. Both parties attended the hearing and had an opportunity to be heard.

The facts before me are as follows. This tenancy began on July 28, 2007 and ended on June 30, 2009. The rent was \$725.00 due in advance on the first day of each month. The tenant paid a security deposit of \$362.50 and a pet damage deposit of \$200.00 at the start of the tenancy. The circumstances that gave rise to the present claims involve the activities of other occupants of the building and their 'visitors' particularly the man who lived across the hall from Ms. T. Ms. T lived in her apartment with her infant boy who was born in May of 2008. Her partner is a truck driver who is only home 4 or 5 days per month. According to Ms. T the building was becoming unsafe with an escalating amount of violence, drug use, overdoses, prostitution, arrests and so on. As well, the man across the hall would regularly knock on Ms. T's door knowing she was alone and demand that she open the door because he needed something or because he wanted to give gifts to her son. Ms. T complained many times to the building manager about the situation but the problems continued. Ultimately, Ms. T felt so worried for her safety and that of her son that she gave notice to the landlord on June 2, 2009 that she would be vacating the rental unit on June 30th. After Ms. T had vacated the building, the occupant who had lived across the hall from her was in fact evicted for cause.

The parties have both made monetary claims based on the above fact situation. The landlord is claiming unpaid rent in the amount of \$420.97 for the period July 1 – 17 (the unit was re-rented for July 18th) due to the tenant's failure to give a full month's notice and the tenant is claiming return of her security deposit.

The tenant disputes the landlord's right to hold her responsible for their loss of rent due to a clause that is contained in the tenancy agreement. That clause provides as follows:

18.*Any Tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment, or annoyance shall indemnify the landlord for any reasonable costs and losses caused thereby....*

While it is normally true that a tenant will be held responsible for unpaid rent when the notice to end tenancy is not given a full month in advance, the present case is different in my view due to the inclusion of clause 18 in the tenancy agreement and the fact that Ms. T's departure from the building was directly related to "disturbance, harassment and annoyance" by the occupant across the hall. As a result, I find that the landlord must look to the other occupant for its losses in this case and not to Ms. T.

I therefore dismiss the landlord's claim and order that the landlord pay to the tenant the sum of \$574.62 representing the tenant's original security deposit, pet damage deposit and interest thereon.

I dismiss the landlord's claim for recovery of the filing fee.