

## **DECISION AND REASONS**

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

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover unpaid rent and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Does the tenant owe the landlord rent? Is the landlord entitled to retain the security deposit? Is the landlord entitled to the filing fee?

### **Background and Evidence**

The tenancy started on July 01, 2007 and ended on August 10, 2009. The rent was \$500.00 due in advance on the first day of each month. The rental unit consisted of a bedroom and shared facilities. The tenant paid a security deposit in the amount of \$250.00. There was no written agreement.

The landlord stated that on July 28, 2009, the tenant gave the landlord verbal notice that she was leaving by mid August due to problems with the sharing of facilities. The landlord also stated that the tenant told him to keep the security deposit as her rent for half the month of August. On August 01, 2009, the tenant did not pay rent and the landlord served her with a notice to end the tenancy.

The tenant stated that she paid her rent on August 01, 2009 but did not have a receipt to support her statement. The tenant filed a statement describing the living conditions in the house. She stated that two days into the tenancy, the landlord put conditions on the use of the kitchen, bathroom and laundry. He stopped her from showering in the morning prior to going to work, in order to conserve hot water and advised her to use the facilities at the YMCA.

On July 07, 2009, a week into the tenancy the tenant attempted to use the kitchen and laundry room at approximately 3p.m. and the landlord started shouting at her, using

profanity. The next day the tenant wrote a letter to the landlord advising him that his behaviour was not acceptable.

The landlord admitted that he was belligerent on that day and that things were not working out with respect to the timings that both parties worked and slept. The tenant stated that the landlord's behaviour got progressively worse and she felt intimidated by his use of foul language and his threatening behaviour.

The tenant also stated that the landlord started to use other methods of intimidation such as leaving the back door wide open when he left for work at night, allowing strangers into the home in his absence, disturbing her at night by increasing the volume of the TV and being very disrespectful to her.

The tenant stated that the landlord's behaviour was causing her emotional, physical and mental distress to the point that it affected her performance at work and she decided that she would have to move out for her personal safety.

After the tenant moved out, the landlord stated that he was unable to find a suitable tenant for the remainder of August or for September. The landlord did not file any evidence to support his efforts to find a new tenant. The landlord is claiming \$500.00 for rent for August and \$50.00 for the filing fee and to retain the security deposit in partial satisfaction of his claim.

### **Analysis**

The tenant stated that she paid her rent for August but did not have a receipt to confirm that she had. The landlord stated that she had not paid rent for August. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Accordingly, I find that the tenant did not pay rent for August.

Section 27 of the *Residential Tenancy Act*, states that a landlord must not restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit, as living accommodation.

Section 28 of the *Residential Tenancy Act* states that a tenant is entitled to quiet enjoyment and right to the use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the documentary and verbal testimony of both parties I find that the landlord put conditions on the use of the basic services e.g. taking a shower, using the kitchen and doing laundry and therefore jeopardized her right to the use of the common areas. The relationship between the two parties deteriorated to the point that the tenant was forced to leave in the interest of her safety.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with this *Act*, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. The tenant advised the landlord on July 28, 2009, that she was moving out by mid August. The landlord did not provide any evidence to show that he made efforts to mitigate his losses by advertising for a tenant and/or showing the rental unit to prospective tenants.

Based on the tenant's reasons for ending the tenancy and the lack of efforts on the part of the landlord to mitigate his losses, I find that the landlord is not entitled to rent for the latter half of August.

### **Conclusion**

I order that the landlord retain the security deposit of \$250.00 as rent for the first half of August. The landlord has not proven his case and therefore must bear the cost of filing his application.

Dated November 06, 2009.

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Dispute Resolution Officer