

## **DECISION**

**Dispute Codes:** MNDC and FF

### **Introduction**

This application was brought by the tenant seeking authorization to end the tenancy under section 45(3) of the *Act* on the grounds that the landlord breached a material term of the rental agreement, not corrected within a reasonable time of receiving written notice. The tenant also seeks a monetary order for loss or damages under the Act (loss of quiet enjoyment), and recovery of the filing fee for this proceeding.

As a preliminary matter, the landlord advised the tenant by letter of January 5, 2010, that the landlord would waive the liquidated damages clause in the rental agreement and the right to claim potential loss of rent if the tenant gave the standard one-month notice, shampooed the carpet and complete general cleaning at the end of the tenancy.

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

The remaining matter requiring a decision on this application is whether and in what amount the tenant is entitled to a Monetary Order for loss of quiet enjoyment and recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on June 1, 2009 under a fixed term rental agreement set to end on May 31, 2010. Rent is \$850 per month and the landlord holds a security deposit of \$425 paid on April 20, 2009.

During the hearing, the tenant gave evidence that he based his claim for loss of quiet enjoyment on three primary issues: he has been negatively affected by the odour of cigarette smoke even though it is a non-smoking building; he has had mice in the rental unit and he has been disturbed by upstairs neighbours.

The tenant have evidence that he had raised these issues with the building manager verbally early in the tenancy, but he did not write to the property manager until December 1, 2009. The property manager replied by letter of December 17, 2009 reviewing the tenant's concerns and the landlord's efforts to address them. That letter advised that the landlord would accept one-month notice to end the tenancy, and in the follow up letter of January 5, 2009, specified that the landlord would waive the liquidated damages clause and any consequent loss of rent normally applied to ending a fixed term agreement early.

As to the smoking issue, the tenant gave evidence that he is sensitive to second-hand smoke and would not have entered into the tenancy agreement if he had been aware that there were smokers in the building. The landlord noted that article 35 of the rental agreement states that while new tenancies prohibit smoking, existing tenants who smoked were excluded from the prohibition. The tenant had initialed that article.

Nevertheless, the building manager made some attempt to minimize the problem, including installation of a door sweep under the tenant's door, utilization of fans in the

hall and opening fire doors to try to remove odors, and checking neighboring units for cracks that might allow smoke in the subject rental units.

The tenant challenged the fact regarding the placement of fans, the propriety of leaving fire doors ajar and the effectiveness of checking for cracks.

As to the presence of mice, the tenant gave evidence that he had seen a mouse in the rental unit, a bag of flour had been compromised and he had seen mouse droppings. The landlord submitted a number of receipts from its pest control company as evidence of an ongoing pest control program. In addition, receipts dated October 22, 2009, November 5, 2009 and December 3, 2009 made specific reference to the subject rental unit. The first noted no debris or access holes in the subject or neighboring units, the second found the same and noted material left before had not been touched and the last one recommended filling one hole but again reported no debris. Photographs submitted by the tenant show some debris, but it is not possible to determine if it is mouse droppings. With respect to the pest treatment, the tenant had also complained the unit had been entered without 24-hour notice. The property manager addressed that concern in her letter, assuring the tenant that 24-hour notice was policy and every effort was made to respect it.

As to the tenant's concerns about noise, the building manager gave evidence that he had spoken to the tenants above. They leave for work very early but agreed to try to be quieter. The building manager had also spoken to the subject tenant who had left his radio on loud in retaliation for the disturbance.

## **Analysis**

Residential Policy Guideline 6-1 advises in part that, "A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it."

In this instance, I find that the building manager attempted to address the tenant's concerns early in the tenancy and that, when advised in writing, the property manager responded promptly and reasonably.

I find that the landlord has acted in good faith in responding to the tenant's concerns and, in failing to do so to his satisfaction, acted very fairly in the offer to accept an early end to the fixed term tenancy, waiving their recourse to the liquidated damages clause of the rental agreement and any consequent claim for loss of rent.

I believe that if the tenant had written to the property manager earlier as he did on December 1, 2009, the property manager in all probability would have shown understanding of his sensitivity to smoke and permitted him to end the tenancy much sooner.

## **Conclusion**

The application is dismissed without leave to reapply and the tenant remains responsible for his own filing fee.

January 27, 2010