

## **DECISION**

Dispute Codes       MNR, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with cross applications. The landlords applied for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit; and, recovery of the filing fee. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; return of the security deposit; recovery of the filing fee; and, other issues. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

### Issues(s) to be Decided

1. Have the landlords established an entitlement to unpaid rent, loss of rent, advertising costs and utility costs?
2. Has the tenant established that the landlords violated the Act, regulations or tenancy agreement and an entitlement to compensation from the landlords?
3. Return or retention of the security deposit.
4. Award of the filing fee.

### Background and Evidence

I heard undisputed evidence as follows. The fixed term tenancy commenced September 15, 2009. The tenant was required to pay rent of \$1,000.00 on the 1<sup>st</sup> day of every month and was responsible for paying for her own hydro costs. The tenant paid a \$500.00 security deposit at the commencement of the tenancy. On September 20, 2009 the tenant gave the landlords a letter advising that she was vacating the rental unit. On September 22, 2009 the tenant vacated the rental and did not pay rent for the month of October 2009. The landlords started advertising the rental unit October 5, 2009 and re-rented it as of November 15, 2009.

The landlords are seeking to recover loss of rent incurred from October 1, 2009 through to November 15, 2009, plus hydro costs and advertising costs. The landlords testified that they advertised in the local newspaper and on the internet and incurred as cost of \$96.24. The landlord claim they incurred approximately \$50.00 per month for the hydro costs.

The tenant is seeking compensation of \$1,500.00 from the landlords because the tenant slept in the unit only two nights due to noise from large trucks passing by the property in the early morning hours, the neighbour's barking dog, the noise from the music school located beneath the rental unit, the off-gassing from the new carpets in the rental unit, and the smell of marijuana coming from somewhere in the vicinity. These concerns were outlined in the tenant's letter given to the landlord on September 20, 2009. Further, the tenant explained that she felt lied to by the landlords as the tenant claimed the landlords had promised her that the unit would be soundproof and the landlords did not inform her about the numerous trucks that pass the property.

In response to the tenant's statements the landlords testified that the tenant was told they were making their best efforts to soundproof the rental unit; that they have lived across the street from the rental unit for many years and have not been disturbed by large trucks, barking dogs or the smell of marijuana. The landlords explained that the rental unit is located above a very visible music school and in the village core so the tenant should have expected to hear noises normally associated with semi-urban location. The landlords also stated that the carpets were no longer off-gassing.

Upon enquiry, the landlords stated that they did not advertise until October 5, 2009 on the advice of the Residential Tenancy Branch staff as they thought they should wait to see if the tenant would pay the rent for October 2009.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Where parties have entered into a fixed term tenancy, it is a violation of the tenancy agreement to end the tenancy before the expiry date unless there is cause to end the tenancy or there is a mutual agreement to end the tenancy. A tenant may end a fixed term tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

It is not in dispute that the parties had a fixed term tenancy and the tenancy ended before the end of the fixed term. Since the tenant ended the tenancy, the tenant has the burden to show that she had the legal right to end the tenancy before the end of the fixed term. The tenant's position was that the excessively loud conditions and other annoyances were the reason for ending the tenancy; however, the parties provided disputed testimony concerning the number of large trucks passing by the rental unit, noise from a neighbour's dog, marijuana smoke and the promise of a soundproofed

rental unit. Even if I were to accept the tenant's version of events over that of the landlords, the tenant would still have the obligation to show that these disturbances violated a material term of the tenancy agreement and that the tenant gave the landlord written notification with respect to the violation and a reasonable amount of time to rectify the problem. Upon review of the tenancy agreement, and considering the obligations of a landlord under the Act, I find the tenant failed to provide evidence that these disturbances violated a material term of the tenancy agreement or the Act. Therefore, I do not find the tenant had the legal right to end the fixed term tenancy before the end of the fixed term.

As the tenant has failed to establish the landlords violated the tenancy agreement, Act or regulations, the tenants request for monetary compensation from the landlords is dismissed.

Having found the tenant violated the tenancy agreement by ending the tenancy before the end of the fixed term and the tenant gave very short notice to the landlords, I find the landlords entitled to recover loss of rent for the month of October 2009.

I do not award the landlords loss of rent for November 1 – 15, 2009 as I find the landlords did not take sufficient action to advertise the rental unit as soon as possible. Although the tenant is responsible for compensating the landlord for loss of rent for October 2009 and onwards under the terms of the tenancy agreement, the tenant had clearly given up possession of the unit in September 22, 2009 and I do not find it reasonable to wait until October 5, 2009 to commence advertising efforts. Therefore, I find the landlords did not do whatever was reasonable to minimize their loss for November 2009 and I deny this portion of the landlords' claim.

The landlords did not supply documentary evidence to support their advertising costs or hydro costs and I deny these portions of the landlords' claim.

In light of the above findings, the tenant's application is dismissed. The landlords are awarded loss of rent for October 2009 in the amount of \$1,000.00 plus \$50.00 towards the filing fee paid for this application. The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance of \$550.00. The landlords must serve the Monetary Order upon the tenant and may enforce the Monetary Order in Provincial Court (Small Claims).

### Conclusion

The tenant's application was dismissed. The landlords were partially successful with their application and were authorized to retain the tenant's security deposit and were provided a Monetary Order for the balance of \$550.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 02, 2010.

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Dispute Resolution Officer