

## **DECISION**

Dispute Codes      MNDC, MNR, MN SD, FF

### Introduction

This was an application by the tenant for the return of her security deposit. The landlords applied for a monetary order for unpaid rent and propane costs and an order to retain the security deposit. The hearing was conducted by conference call. The landlords and the tenant participated in the hearing

### Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit including a monetary order for double the amount of the deposit? Is the landlord entitled to a monetary order for loss of rent and other expenses and if so, in what amount?

### Background and Evidence

The rental unit is a manufactured home. The tenancy began July 1, 2009. Monthly rent was \$1,350.00 the tenant paid a security deposit of \$675.00 at the commencement of the tenancy. I was not provided with a copy of the tenancy agreement, but both parties agree that the tenancy was for a fixed term beginning July 1, 2009 and continuing until June 30, 2010.

By e-mail dated October 22, 2009 the tenant gave notice that she was moving out of the rental unit. The tenant told the landlords that she had lost her full-time job and was having difficulty paying the rent. She also said she was bothered by mold in the rental unit that affected her asthma. In her e-mail the tenant said that the mold in the unit was bad for her health and said she needed to give her 30 day Notice. She said in part as follows:

You have been great landlords and I have appreciated being here. If you can find someone to rent this unit by the 15<sup>th</sup> of next month then I would appreciate it.

If not I am willing to pay rent up until the 1<sup>st</sup> of Dec. And if I have to forfeit my damage deposit, then I will.

The tenant moved out before December, 2009. She provided her forwarding address to the landlord by e-mail dated December 1, 2009. On December 8, 2009 the tenant sent an e-mail to the landlord noting that they had re-rented the unit. She said that she expected her damage deposit to be returned and said that if she did not receive it by the 15<sup>th</sup> then she would file a grievance with the Rentalsman.

The landlords stated in their evidence that the tenant mentioned a mold problem in July, 2009. The landlords offered to perform work to deal with any mold problem. The tenant cleaned the mold and obtained an air cleaner. The tenant then told the landlords that the problem was not bothering her: "so lets leave it alone". The landlords did not hear further about a mold problem until the tenant sent the October 22<sup>nd</sup> e-mail.

The tenant filed her application for dispute resolution on January 13, 2010. The landlords filed their application on February 9, 2010. The landlords testified that they re-rented the unit effective December 15<sup>th</sup> but had to reduce the rent by \$50.00 per month. The landlord has claimed payment of \$1,285.43. The amount claimed included \$675.00 loss of revenue for half of December and \$300.00 loss of revenue for the six months remaining in the lease term. The landlords also claimed \$25.00 for loss of revenue for December 15<sup>th</sup> to 31<sup>st</sup>. The landlords claimed \$285.43 for propane used by the tenant.

### Analysis and Conclusion

The tenant claimed that she was compelled to move because of a mold problem. I do not accept that the mold was the operative reason for her decision to end the tenancy. If the mold was causing health problems for the tenant I would expect to see evidence of further communications to the landlords about the problem. If it is the case that the tenant suffered health problems due to mold after July, 2009 she did not give the landlord notice of the problem or an opportunity to rectify it. I find that without notice to

the landlord to rectify the problem followed by a course of inaction on their part, the mold issue does not constitute a sufficient ground to excuse the tenant's breach of the fixed term lease agreement. I find that the tenant did not have cause to end the agreement and she is therefore responsible for the landlord's loss of revenue.

The landlords' claim includes a duplication; they claimed \$675.00 for loss of rent for the period December 15 to 31<sup>st</sup> and they also claimed a further \$25.00 for the same period presumably based on the lower rental rate for the new tenant. The \$675.00 claimed fully compensates them for the loss of revenue for December and the claim for a further \$25.00 is denied.

The landlord's are entitled to the amount claimed for propane. I award the landlord the sum of \$1,260.43. They are entitled to recover the \$50.00 filing fee paid for their application for a total award of \$1,310.43.

The tenant has claimed for recovery of her security deposit, including double the amount of the deposit. The landlords' position is that the tenant agreed that they could retain the deposit and they are not liable for the tenant's claim to double the deposit amount.

Section 38 (4) of the Residential Tenancy Act provides that a landlord may retain an amount from a security deposit if, at the end of the tenancy the tenant agrees in writing that the landlord may retain an amount on account of a liability or obligation of a tenant or where, after the tenancy has ended, the director orders that the landlord may retain the amount. Section 38 (6) of the Act requires the landlord to return the tenant's deposit or make an application to claim it within 15 days of the end of tenancy or the date that the tenant provides her forwarding address in writing, whichever is later.

I find that the tenant's statement that if she had to forfeit her deposit then she would was not an agreement in writing, it was an equivocal statement and it was clear to the landlords when they received her December 8, 2009 e-mail requesting the return of her

deposit that she did not consent to the landlords' retention of it. The landlord did not return it within 15 days after December 8th and they did not file an application to claim it until February, 2010, long after the 15 day period had expired. I find that the tenant is entitled to a monetary award in the amount of double her security deposit. No interest has accrued on the deposit amount and the tenant did not pay a filing fee for her application and I therefore award her the sum of \$1,350.00.

Pursuant to section 72 of the Act I set off the award to the landlord against the amount awarded to the tenant. This leaves a net amount due to the tenant of \$39.57 and I grant the tenant a monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: April 30, 2010.

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