

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with two Applications for Dispute Resolution filed by the Landlord, requesting an order for monetary compensation for damage or loss arising from the Tenant breaking a fixed term lease early, to retain the security deposit and interest in partial satisfaction of the claim, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Did the Tenant breach the fixed term lease, entitling the Landlord to monetary compensation?

Background and Evidence

This tenancy began on June 1, 2008, with the parties entering into the initial fixed term tenancy agreement for one year ending on May 31, 2009, and the Tenant paying the Landlord a security deposit of \$700.00 on May 16, 2008.

Following the expiry of the initial lease, the Landlord and the Tenant entered into a second, one year fixed term lease, to run from June 1, 2009, until May 31, 2010.

On November 27, 2009, the Tenant wrote to the Landlord and stated she was ending the fixed term lease as of December 31, 2009. The Tenant listed the following reasons for ending the lease: mildew in the unit, lack of heat in the bathrooms, bedrooms and hallway, mold and moss on the deck and in the courtyard of the property, and noise from another occupant of the building.

The Tenant testified she had been complaining of these items since early in the tenancy. She provided evidence that she and her children suffer from asthma and the conditions of the rental unit were adding to their health problems. She testified she phoned an Agent for the Landlord on many occasions, but nothing was done to address her concerns.

The Tenant further testified she entered into the second fixed term tenancy agreement thinking the Agent for the Landlord would address her concerns and because she did not want to move at that time because of her child being born. The Tenant testified she had not put her complaints about the rental unit in writing to send to the Landlord until she sent the letter on November 27, 2009, informing the Landlord she was ending the tenancy.

The Agent for the Landlord testified that the Landlord had advertised the unit for rent and was able to find new renters for the rental unit. The new tenancy began on February 1, 2010. At the time of filing the Applications the Landlord had sought compensation for the remainder of the lease, or \$7,000.00 for rent from January 1, to May 31, 2010. During the hearing the Agent for the Landlord testified that they were now only seeking compensation for one month of rent, of \$1,400.00, for January of 2010, while the unit remained vacant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, **I find the Tenant breached the Act and the tenancy agreement by breaking the fixed term lease before it ended.**

Under section 45(1) of the Act, the Tenant could not have ended the fixed term agreement before it ended, unless she had an order from a Dispute Resolution Officer or she had enforced her other rights under the Act.

To enforce her rights under the Act, the Tenant should have written the Landlord in accordance with section 45(3), and requested the repairs she alleges were required in the rental unit be done within a reasonable time, or she would be ending the tenancy agreement. The Tenant failed to do this.

Furthermore, earlier in the tenancy the Tenant could have requested in writing that the Landlord repair the alleged problems with the rental unit within a reasonable time. If the Landlord failed to address the issues in her written request, the Tenant could have filed her own Application requesting the Landlord be compelled to make the repairs and

request a rent reduction or other compensation for the alleged problems. The Tenant did not do this either.

The Landlord mitigated the loss which resulted from the Tenant's breach as required by the Act and had new tenants move into the rental unit on February 1, 2010. However, the unit was vacant for January of 2010.

Therefore, pursuant to section 67 of the Act, I find the Landlord is entitled to one month of lost rent due to the Tenant's breach.

I find that the Landlord has established a total monetary claim of **\$1,500.00**, comprised of \$1,400.00 for one month rent, and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord may keep the security deposit and interest of **\$706.60**, in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$793.40**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

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: April 22, 2010.

Dispute Resolution Officer