

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord, and an application by the tenant.

The Landlord applied for dispute resolution on March 10, 2010 for;

- A Monetary Order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, and to recover the filing fee.
- Order to retain the security deposit in partial satisfaction of the monetary claims.

The Tenant applied for dispute resolution on March 12, 2010 for:

- Return of the security deposit of \$800
- A Monetary Order for compensation under section 51(2) of the Act and recover the filing fee.

The tenant attended the conference call hearing. The landlord *did not* attend for the duration of these proceedings. Neither party requested an adjournment. The tenant was given full opportunity to present their application, provide submissions, present evidence and ask questions. Prior to concluding the hearing the tenant acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed ?

Background and Evidence

The tenant's undisputed testimony is as follows. The rental unit is a residential property consisting of a 5 bedroom house. The tenancy began on March 01, 2009 as a fixed term tenancy ending March 01, 2010 with a condition that at the end of the fixed period

of time the tenancy could continue on a month to month basis or another fixed length of time. Rent stipulated in the tenancy agreement was \$1600 per month payable on the 1st. of each month. At the outset of the tenancy the landlord collected a security deposit of \$1600. There was no move in inspection conducted at the beginning of the tenancy.

The tenant's testified that their intentions were to remain in the rental unit after fulfilling the fixed term requirement. On January 31, 2010 the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use effective March 31, 2010 with the reason that *the rental unit will be occupied by the landlord or the landlord's spouse or close family*. The tenant vacated the rental unit at the end of the fixed term subsequent to their Notice to Vacate and receiving their last month free of rent payable under the tenancy agreement. There was no move out inspection planned or conducted at the end of the tenancy. None the less, at the end of the tenancy the landlord returned \$800 of the security deposit to the tenant and retained \$800 toward purported damages to the rental unit. After the tenant vacated they received a copy of a detailed move out inspection report conducted solely by the landlord and dated the day the tenant vacated.

The tenant alleges that the landlord did not issue the Notice to End in good faith or with intention to occupy the house. The tenant bases their assertion on their evidence that several days after the landlord gave them the Notice to End for Landlord's personal use the landlord had posted an on-line advertisement on Craigslist advertising that the rental house would be available on the 1st of March at \$2500 per month. The tenant provided a copy of the advertisement dated February 03, 2010, listing the house particulars as the tenant knew them. The tenant asked a friend to e-mail the posting requesting additional information. On February 09, 2010 and a response was returned by an individual with the name of the landlord named in this proceeding - indicating the dispute address, the landlord's name, the landlord's telephone number, the landlord's e-mail address, as well as information indicating the tenancy situation, and information respecting the available date. The tenant asked another acquaintance to e-mail the posting on February 13, 2010 asking if the house was still available. The same day the acquaintance received a response from the landlord's e-mail address, signed by the landlord's purported legal first name, and stating :

I currently have a persons in the home and am not going to show the home before 01 March because of legal issues. Please send me your telephone #, and I will call you once I have my house clean

The tenant testified that since they have vacated, they have come to understand that the house has been rented out in as multiple tenancies. They routinely drive by the rental house and have noticed a regular complement of 5 or more cars parked on the residential property.

Analysis

As the landlord did not attend these proceedings, the landlord's application is hereby **dismissed** without leave to reapply.

I have considered all relevant evidence, and all relevant submissions advanced by the tenant and have considered all testimony given in the hearing.

On preponderance of the evidence, and on the balance of probabilities I accept the tenant's evidence and **I find** the tenant is entitled to compensation pursuant to section 51(2) which, in part, states as follows:

Tenant's compensation: section 49 notice

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As result of all the above, **I find** the tenant is entitled to double the monthly rent payable under the tenancy agreement in the amount of **\$3200**.

As I have dismissed the landlord's application and find no basis upon which the landlord has a legal right to lay claim to the deposit, **I further find** the tenant is entitled to the return of the balance of their security deposit in the amount of **\$800**.

I find the tenant's application has merit, and the tenant is therefore entitled to recovery of the filing fee from the landlord for the cost of this application in the amount of **\$50**. The quantum of the tenant's entitlement is for **\$4050**.

Conclusion

The tenant is given a Monetary Order under Section 67 of the Act for the amount of **\$4050**. If necessary, this order may be filed in the Small Claims Court 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*.