

## **DECISION**

**Dispute Codes:** MNR, MNSD, MNDC

### **Introduction**

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary order for unpaid rent;
2. A monetary order for damage and/or compensation;
3. An order to be allowed to retain the security deposit; and
4. A monetary order to recover the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

### **Summary of Background**

The landlord testified that this tenancy began on or about September 1, 2009 the landlord says the tenancy was set for a fixed term of one year ending August 31, 2010. Rent was fixed at \$1,200.00 per month. The landlord initially said the tenant paid only a \$400.00 security deposit however the portion of the tenancy agreement submitted in evidence shows that the tenant paid a security deposit of \$600.00 on August 31, 2010. The landlord says the tenant also agreed to pay one-half of the utilities but this is not shown on the tenancy agreement signed by both parties.

The landlord testified that on February 1, 2010 the tenant committed suicide and therefore did not provide proper notice as required by the Act. The landlord testified that the tenant had already paid rent for February. The landlord testified that the premises had to be cleared out and cleaned up and this was not accomplished until near the end of February. The landlord says he began advertising the rental unit around February 26 and eventually secured new tenants for April 1 however this left him out of pocket for March's rent of \$1,200.00 and one-half of the utilities of \$110.00.

The tenant's executor submits that she advised the landlord that she would have the rental unit cleared out and cleaned up by the end of February and he could go ahead and begin showing the rental unit at once. Further, the landlord says she found amongst the deceased tenant's papers that the utilities were in the tenant's name and he shared them 50/50 with the downstairs tenant, not with the landlord. The tenant's executor says she has paid the utilities bills however she has not received the 50% from the other tenant to date.

### **Findings**

The facts show that the tenant died on February 1, 2010 having already paid February's rent. Despite the tragic circumstances surrounding the end of this tenancy the landlord has made claim for recovery of rental loss because the tenant did not give proper notice

to end the tenancy as required by the Act. The Act does say that a landlord is entitled to 30 days notice to end a tenancy. Accepting that notice that the tenancy was ending was made clear on February 1, 2010, this being the date of the tenant's demise, I find that the earliest time this tenancy could have ended was March 31, 2010.

With respect to mitigation, the evidence shows that the tenant's executors did not complete the move-out and clean up until February 26, 2010. I accept that the landlord did make attempts to re-rent the premises but believed he could not take any steps until the matters surrounding the tenant's demise were taken care of, the tenant's goods were removed and the rental unit cleaned. These tasks were not completed until the end of February and this made it difficult for the landlord to secure a tenant for March 1, 2010. I accept the landlord's evidence that, once able to do so, he listed the rental unit on Craigslist and eventually secured a new tenant effective April 1, 2010. I will therefore allow the landlord's application for March's rent in the sum of \$1,200.00.

I dismiss the landlord's claim for one-half of the utilities. I find that he has not shown, to my satisfaction, that the tenant agreed to share the cost of utilities with the landlord. I accept the evidence of the tenant's executor that the tenant was sharing the utilities with the other tenant.

There is a dispute about the amount of the security deposit. I find that it was \$600.00 not \$400.00. \$600.00 is half of a month's rent which is the allowable amount under the Act and this is the sum set out on tenancy agreement.

I will allow the landlord to retain the \$600.00 security deposit in partial satisfaction of his claim.

As the landlord has been successful in this application I will allow his claim to recover the \$50.00 filing fee.

## **Conclusion**

I will make an Order in favour of the landlord as follows:

Rental Arrears for Notice period	\$1,200.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-600.00
Total Monetary Award in favour of Landlord	\$650.00

The landlord is provided with a formal Order in the above terms. The tenant must be served with a copy of the order as soon as possible. Should the tenant fail to comply with the Order the Order may be filed an enforced as an Order of the Provincial Court of British Columbia.

Dated: July 16, 2010.

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