

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, utilities and compensation for loss or damage under the *Act* pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38 in partial satisfaction of the monetary order requested; and
- authorization to recover the filing fees for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the application for dispute resolution package to the tenant's lawyer by registered mail on June 1, 2010. The tenant confirmed that she had received that package and that she was proceeding without the assistance of her lawyer. Both parties confirmed that they had received the evidence packages. I am satisfied that the landlord served notice of this application in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, utilities and damage or loss as a result of this tenancy? Is the landlord entitled to recover all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fees for this application from the tenant?

### Background and Evidence

This one-year fixed term tenancy commencing on September 1, 2009 was scheduled to end on August 31, 2010. The tenant was paying \$2,675.00 per month plus two-thirds of

the utility costs. The landlord testified that she continued to hold the tenant's \$1,337.50 security deposit and \$1,337.50 pet deposit paid on August 29, 2009.

The parties agreed that the tenant advised the landlords that she could no longer continue living at the rental premises and intended to vacate the rental premises at the end of April 2010. She left the premises on April 26, 2010.

The parties agreed that no condition inspection report was prepared when the tenant moved into the rental premises. The landlords testified that they attempted to conduct a joint move-out condition inspection of the premises, but the tenant would not co-operate with their requests. They testified that they made an oral request to conduct a move-out inspection prior to April 26, 2010 when the tenant vacated the premises. They testified that they tried to call her a second time and sent text messages, but the tenant would not respond to their requests. The female landlord said that she did meet with the tenant at the property on April 26, 2010, but the tenant left before she was able to ask her to accompany her on a joint inspection of the premises. Both parties agreed that the landlords made no written request for a joint move-out condition inspection of the premises. The landlord submitted into evidence a completed April 30, 2010 move-out inspection report. The landlords testified that this report was completed without the tenant's participation and was not sent to the tenant until it was included in their evidence package shortly before this hearing. The landlords confirmed that their notes in this report regarding the condition of the premises at the beginning of the tenancy were not made until after the tenant moved out of the premises.

The landlords provided photographs and receipts to support their request for a monetary order for supplies, damage and repairs required as a result of this tenancy. The tenant testified that these photographs did not accurately reflect the condition of the premises when she moved out and asserted that she left the rental premises in a condition similar to when she commenced her lease.

The landlords testified that they took measures to mitigate the tenant's responsibility for the remainder of her lease (i.e., until August 31, 2010). They said that they re-leased the rental premises for \$2,850.00 per month plus two-thirds of the utilities commencing on May 15, 2010. The landlords asked for recovery of their lost rent from May 1, 2010 until May 15, 2010.

The landlords provided undisputed details of their calculations of the tenant's share of the utility costs until May 15, 2010. The tenant said that she accepted the landlord's calculations of her unpaid utility costs, as they were now based on actual utility company bills rather than estimates.

#### Analysis Unpaid Rent

Sections 44 and 45 of the *Act* establish how tenancies and fixed tenancies end. The evidence is clear that there is no written agreement between the parties to end this tenancy prior to the end of its fixed term. I therefore find that the tenant vacated the rental unit contrary to Sections 44 and 45.

I find further that the evidence shows that as a result of the tenant's actions, the landlord suffered a rental loss. In a fixed term tenancy, the tenant is responsible for rent owing until the expiration of the fixed term. When a tenant ends a fixed term lease before the expiration date of that lease, the landlord is under an obligation to attempt to mitigate the amount of the tenant's liability. The landlords testified that they were able to re-rent the premises as of May 15, 2010 for \$2,850.00 per month. Based on the landlord's efforts I am satisfied that he has sufficiently mitigated his damages.

I grant the landlord a monetary award of \$1,425.00 for the landlord's loss of rent from May 1, 2010 until May 14, 2010. As set out below, I reduce this monetary award by the amount of net rental gain obtained by the landlords as a result of the tenant's premature termination of the tenancy agreement.

| Item   | Amount          |
|--|-----------------|
| Loss of Rent – May 1-May 14, 2010  | \$1,425.00      |
| Less Net Gain in Rent<br>May 15- 31, 2010<br>( $\$2,850.00/2 - \$2,675.00/2 = \$87.50$ ) | -87.50          |
| Less Net Gain in Rent for June 2010<br>( $\$2,850.00 - \$2,675.00 = \$175.00$ )          | -175.00         |
| Less Net Gain in Rent for July 2010<br>( $\$2,850.00 - \$2,675.00 = \$175.00$ )          | -175.00         |
| Less Net Gain in Rent for August 2010<br>( $\$2,850.00 - \$2,675.00 = \$175.00$ )        | -175.00         |
| <b>Total Monetary Award for Rental Loss</b>  | <b>\$812.50</b> |

### Unpaid Utilities

I accept the landlords' undisputed testimony that the tenant is responsible for the unpaid utilities attributable to her portion of the rental property until May 15, 2010 when the rental premises were re-leased. I grant the landlord a monetary award of \$599.92 for unpaid utilities.

### Cleaning, Supplies, Damage and Repairs to the Rental Premises

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the landlord, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

While the landlord says the tenant is responsible for damage and cleaning costs for the rental unit, the tenant has provided evidence that the rental unit was in similar condition when she commenced her lease. The onus or burden of proof is on the party making the claim. When there is contradictory evidence regarding the condition of premises, it is very helpful to review joint condition inspection reports conducted when a tenant moved in and out of the rental premises. At the end of a tenancy, a landlord is expected

to make at least two requests, including one in writing, before the landlord proceeds with an inspection without the tenant's participation. If a move-out condition inspection report is completed by a landlord without the tenant, the landlord is to send the report to the tenant within 15 days of that inspection.

In this case, the landlords did not conduct a move-in inspection, nor did they complete a joint move-out inspection with the tenant. They did not provide a written request to conduct a move-out inspection and did not forward a copy of the completed move-out condition inspection report until a few days before the dispute resolution hearing. Although the landlords entered into evidence photographs, the tenant disputed the accuracy of these photographs and submitted her own written evidence to the contrary. By failing to follow the provisions of the *Act* and the *Residential Tenancy Regulation* with respect to move-in and move-out condition inspections and inspection reports, the landlords did not provide convincing evidence to support their claim that the tenant is responsible for cleaning, repair and damage costs.

When one party provides testimony of the events in one way, and the other party provides equally probable but different testimony regarding the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find the landlords have failed in their burden and I dismiss their application for compensation for cleaning costs, supplies, damage and repairs to the rental premises.

#### Security Deposit

I allow the landlords to recover a portion of the tenant's security and pet deposits plus interest in satisfaction of the landlord's monetary award. No interest is payable over this period.

#### Filing Fee

As the landlords have been partially successful in their application, I allow them to recover their filing fees for this application.

Conclusion

I grant a monetary award as set out below.

| <b>Item</b>  | <b>Amount</b>       |
|--|---------------------|
| Monetary Award for Rental Loss as a Result of Early Termination of Tenancy | \$812.50            |
| Unpaid Utilities to May 15, 2010   | 599.92              |
| Less Security Deposit  | -1,337.50           |
| Less Pet Deposit   | -1,337.50           |
| Recovery of Filing Fee for this application                                | 50.00               |
| <b>Total Monetary Award</b>  | <b>(\$1,212.58)</b> |

I allow the landlords to recover the filing fee for this application and to retain a portion of the tenant's security and pet deposits. The amount of the landlord's monetary award (i.e., \$1,462.42) is less than the tenant's security and pet deposits. Under these circumstances, I issue an order to the landlord to return \$1,212.58 to the tenant, the remaining portion of the tenant's security and pet deposits held by the landlord.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.