

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

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

The tenant applied for a monetary order for:

- compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of her security deposit from the landlords pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to call witnesses and to make submissions. The male landlord (the landlord) testified that he sent the landlord's application for dispute resolution to the tenant by registered mail on June 10, 2010. The tenant confirmed that she received this application. The tenant testified that she sent the landlords her application for dispute resolution by registered mail on August 5, 2010. The landlord confirmed that he received the tenant's application. The tenant also testified that she sent an amended version of her application for dispute resolution to the landlords by registered mail with her evidence package on September 12, 2010. Although the landlord's representative testified that the landlord received this amended application, she noted that this amendment did not include the second page which identified the tenant's amendments. However, both the landlord and his representative agreed to proceed with the hearing

as scheduled. I am satisfied that the above documents and evidence have been served in accordance with the *Act*.

Issues(s) to be Decided

Landlords' Application

Are the landlords entitled to a monetary award for loss resulting from the tenant's early termination of the tenancy? Are the landlords entitled to a monetary award for advertising and cleaning costs incurred arising out of this tenancy? Are the landlords entitled to retain the tenant's security deposit? Are the landlords entitled to recovery of their filing fee for their application from the tenant?

Tenant's Application

Is the tenant entitled to a monetary award requiring the landlords to return double the monthly rent because the landlords did not use the rental premises for the purpose stated in their notice to end tenancy for landlord use? Is the tenant entitled to obtain her security deposit from the landlord? Is the tenant entitled to a monetary award equivalent to one-quarter of her rent for a five month period due to the landlord's breach of her quiet enjoyment of the rental premises? Is the tenant entitled to a monetary award for laundry and cheque cancellation costs from the landlord?

Background and Evidence

This tenancy commenced on October 1, 2009 when the previous landlord entered into a tenancy agreement with the tenant. Monthly rent for this studio apartment in a separate building on this property was set at \$650.00. The landlord continues to hold the tenant's \$325.00 security deposit paid on September 13, 2009.

The present landlords, who were former tenants at this property, completed their purchase of this property on October 31, 2009. The landlords initially believed that this was a month-to-month tenancy and issued a 2 Month Notice to End Tenancy for Landlord Use of the Property on January 28, 2010, requesting the tenant vacate the rental premises by March 31, 2010. The tenant applied for dispute resolution of that notice, maintaining that she was in a fixed term tenancy and that the landlords could not

end her tenancy until her fixed term tenancy was to expire in October 2010. At that time, the landlord applied for an Order of Possession, maintaining that this was a month-to-month tenancy.

A Dispute Resolution Officer (DRO) concluded in a March 17, 2010 dispute resolution decision that this was a fixed term tenancy ending on October 1, 2010. The DRO ruled that the 2 Month Notice given by the landlord could not be effective before October 1, 2010, when the fixed term tenancy was to end.

On April 30, 2010, the tenant sent the landlord written notice that she would be vacating the rental premises on May 31, 2010. At that time, she advised the landlords that she intended to withhold her last month's rent in accordance with the 2 Month Notice for Landlord Use of Property provided to her on January 28, 2010.

Background and Evidence - Landlords' Application- Monetary Order

In the landlords' June 7, 2010 application for dispute resolution, the landlords applied for a monetary Order of \$3,250.00. Most of this amount was to compensate for lost rent from June 2010 until the end of the fixed term tenancy on October 1, 2010. At the hearing, the landlord's representative reduced the amount of the requested monetary Order to \$1,356.97. They did so because they were able to rent the premises to another tenant from July 31, 2010 until October 31, 2010 for the same monthly rent of \$650.00. The landlord entered evidence that they incurred advertising costs to arrange for the July 31, 2010 rental of the property and 3 hours of cleaning costs at a rate of \$12.00 per hour at the end of this tenancy. The landlords' revised request for a monetary Order included the following items:

Item	Amount
Rental Loss June 2010	\$650.00
Rental Loss July 2010	650.00
Advertising Costs	20.97
Cleaning Costs	36.00
Total Monetary Award Requested	\$1,356.97

In their written and oral evidence, the landlords did not dispute the tenant's decision to withhold rent for May 2010 in accordance with sections 49 and 51 of the Act. They entered into evidence the following wording of section 51 of the Act.

Tenant's compensation: section 49 notice

(1) A tenant who receives a notice to end a tenancy under section 49{landlord's use of property} is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

The landlords also asked to be allowed to retain all of the tenant's security deposit in partial satisfaction of the monetary award requested. The landlords also requested recovery of their filing fee for this application from the tenant.

Background and Evidence - Tenant's Application- Monetary Order

The tenant has applied for a monetary Order of \$3,250.00 which included the following:

Item	Amount
Return of Security Deposit	\$325.00
Double Monthly Rent due to Landlord's Failure to use Premises for Purpose Cited in Notice to End Tenancy for Landlord Use	1,300.00
Rent Reduction of 25% for Breach of Quiet Enjoyment & Loss of Storage Area - (\$650.00 x 5 months) x .25 = \$812.50	812.50
Laundry Costs while appliances not available	29.46
Cancelled Cheque Fee	10.00

The tenant provided considerable written and oral evidence regarding her claim that the landlord had significantly interfered with her quiet enjoyment of the rental premises. She provided many examples of the interference that she maintained entitled her to a

reduction in her rent from December 2009 until April 2010. Both parties provided evidence regarding the tenant's storage of materials in the common laundry area. The tenant testified that she made an arrangement with the previous landlord to store some of her belongings in that area in exchange for her agreement to store some of the landlord's belongings in her rental premises. The tenant also maintained that the landlord had acted improperly by entering her rental premises to repair taps and raising concerns about her maintenance of the rental premises shortly thereafter. She also presented evidence regarding the landlord's failure to address her concerns about wasp nests and spiders. She said that the landlord harassed her through issuing a series of warnings and notices regarding her maintenance of the premises.

Analysis

Landlords' Application for a Monetary Order

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 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In considering the landlord's application for a monetary Order, I note that the landlord has not claimed for the tenant's failure to pay rent for May 2010. On this basis, I find that the landlord has accepted that the tenant was entitled to withhold the last month of her rent in accordance with the landlord's January 28, 2010 notice under section 49 of the *Act* and in accordance with the above-noted provision of section 51.

I do not find that the tenant's eligibility to refrain from paying her May 2010 rent absolved her of her liability for rent due the landlord from June 1, 2010 until October 1, 2010 under the terms of her fixed term tenancy agreement. A landlord is only entitled to

losses resulting from a fixed term tenancy if it can be demonstrated that an attempt was made to mitigate the tenant's losses. In this case, I am satisfied that the landlord did mitigate the tenant's losses by successfully renting the rental premises for a portion of the remainder of the tenant's fixed term of tenancy. As such, the tenant's potential liability for rental loss is limited to June and July 2010.

As early as January 18, 2010, the tenant sent the landlord an email confirming that she knew she might be held responsible for extra fees or outstanding rent if she left before the end of her fixed term tenancy. She expressed a willingness to leave the rental premises if the landlord wanted her to vacate, but only by the end of April 2010, after the end of her school year. The landlord sent emails to her indicating a willingness to revise the lease arrangements if she wished to leave the rental premises early. The landlord provided the tenant with an opportunity to end this lease early by issuing the tenant the Notice to End Tenancy for Landlord Use on January 28, 2010. Had the tenant not applied for dispute resolution and obtained a decision that this was a fixed term tenancy, the tenant would not have had to pay rent for March 2010 prior to her leaving the rental premises on March 31, 2010. In that event, she would not have been responsible for rent through the end of her one year tenancy. However, she challenged this notice and obtained a DRO decision on March 17, 2010 that this was a fixed term tenancy. Less than six weeks later, the tenant sent her own notice to end tenancy indicating that she planned to end this tenancy by the end of May 2010, after the completion of her academic studies for the year.

Based on the evidence presented, I grant the landlords a monetary award of \$1,320.97 which is comprised of monthly rent of \$650.00 for each of June and July 2010 and the landlords' undisputed advertising costs of \$20.97.

I have not allowed the landlords' claim for cleaning costs of \$36.00. The landlords did not submit a move-in condition inspection report, although one was apparently conducted and issued by the previous landlord. The tenant provided written evidence

from a witness who attested to the tenant's assertion that the premises were left in the same condition as when she moved into the rental premises on October 1, 2009.

Tenant's Application for a Monetary Order for Double Monthly Rent for Landlords' Failure to use Premises for Purpose Cited in Notice to End Tenancy for Landlord Use

The landlord testified that between January 28, 2010 when the landlord served the notice to end tenancy and the tenant's April 30, 2010 notice to end tenancy, the landlord's plans for the property changed. The landlord testified that the close family member who was planning to occupy the rental premises had to make alternate plans once the landlord received the March 17, 2010 decision that this was a fixed term tenancy and could not be ended until the expiration of that fixed term tenancy on October 1, 2010. Given the six-month change in the end date of this tenancy resulting from the DRO's March 17, 2010 decision, it seems neither implausible nor unreasonable that the landlord's family member would have made alternative accommodation plans.

Even if I am wrong on my other determinations regarding the tenant's notice to end tenancy and the effect of the March 17, 2010 decision, I accept the landlord's evidence that circumstances changed as a result of the DRO's finding that this was a fixed term tenancy that could not be ended until October 1, 2010. I dismiss the tenant's application for double the monthly rent from the landlords for failure to use the rental premises for the purposes cited in the January 28, 2010 2 Month Notice to End Tenancy for Landlord Use as I accept the landlords' six-month change in the effective date of the notice to end tenancy .

Tenant's Application for Reduced Rent for Loss of Quiet Enjoyment

The tenant testified that she ended this fixed term tenancy early and months in advance of the October 1, 2010 effective date identified by the DRO in the March 17, 2010 decision because the landlord had breached her right to quiet enjoyment of the property.

Section 28 of the *Act* reads as follows:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I have reviewed all of the written and oral evidence regarding the tenant's allegations that the landlords' interference with her quiet enjoyment of the rental premises entitles her to a reduction in rent from December 2009 until April 2010. While I accept that the landlord/tenant relationship was strained over much of this period, I do not find that the landlords' actions contravened the tenant's right to quiet enjoyment as established under section 28 of the *Act*. The landlord and tenant provided different accounts of many of the examples provided by the tenant that led to her claim that the landlord had interfered with her reasonable privacy, had unreasonably disturbed her, and had interfered with her use of the property. For example, the tenant objected to the landlord's inability to provide specific times when he was planning to conduct yard maintenance to the property. However, the landlord did provide email notifications of times he was planning to do this work. As yard work is somewhat dependent on the weather and other factors, it does not seem unreasonable that a landlord would be unable to provide exact timing of his outdoor work as the tenant requested. When the landlord did provide such notice, the tenant complained that he did not start until much later in the time frame he identified in his email.

I dismiss the tenant's application for a reduction in rent for loss of her quiet enjoyment of her rental premises.

Tenant's Application for Reduced Rent for Loss of Storage Area

I am not satisfied that the evidence presented allowed the tenant exclusive use of the common laundry area for storage purposes. The landlords did allow the tenant to keep some of her storage material in this area, but added some of their own storage material there as well. I find insufficient evidence to allow the tenant reduced rent for the landlord's refusal to allow her exclusive use of storage in the common laundry area.

Tenant's Application for Monetary Order for Other Items

The tenant applied for reimbursement of \$29.46 in laundry costs she incurred while the existing laundry appliances the landlord provided in the common area were being replaced. In reviewing her receipt, some of the charges appear to be for the tenant's soap and snacks. The landlord challenged the authenticity of the receipt and questioned the amount the tenant claimed. I issue a monetary award in the tenant's favour in the amount of \$15.00 for this item.

The tenant claimed \$10.00 for a cheque cancellation fee she maintained was the landlords' responsibility when he lost a rent cheque she provided. The landlord challenged this claim. I dismiss the tenant's claim in this regard as I am not satisfied by the evidence that she is entitled to reimbursement for this item.

Security Deposit and Filing Fees

The parties testified that the landlord continues to hold the tenant's security deposit of \$325.00 plus interest from October 1, 2009 until the date of this decision. I allow the landlords to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

As the landlords have been successful in this application, I allow them to recover their filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms:

Item	Amount
Rental Loss June 2010	\$650.00
Rental Loss July 2010	650.00
Advertising Costs	20.97
Less Laundry Charge	-15.00
Less Security Deposit	-325.00
Filing Fee	50.00
Total Monetary Order	\$1,030.97

This monetary Order allows the landlords to retain the tenant's security deposit and to recover their filing fee for their application. With the exception of the recovery of \$15.00 of the tenant's laundry charge and the return of the tenant's security deposit, I dismiss the remainder of the tenant's application for a monetary award.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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*.