

## **DECISION**

Dispute Codes      MNDC O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord's office. The Landlord confirmed receipt of the hearing package.

The Landlord, Tenant, and the Tenant's Witness appeared, provided affirmed testimony, confirmed receipt of the evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the parties entered into a written fixed term tenancy agreement effective May 1, 2009 which was set to expire April 30, 2010 after which would switch to a month to month tenancy. Rent was payable on the first of each month in the amount of \$1,325.00 and the Tenant paid a security deposit of \$662.50 on April 24, 2009.

The Tenant is seeking reimbursement of three month's rent for February 2010, March 2010, and April 2010, as he vacated the unit prior to the end of the fixed term. He

issued the Landlords a written notice to end tenancy on December 17, 2009 which stated that he would be vacating the unit as of January 31, 2010. He continued to pay the monthly rent until the end of the fixed term. He is of the position that the Landlord failed to make adequate attempts to re-rent his unit.

The Tenant's Witness testified that she inquired to rent a unit with this Landlord to see if they would show her the Tenant's unit. She informed the Landlord that she had a child and noticed that they were not intended to show her the Tenant's suite. When she inquired further she was finally showed the Tenant's unit and was told this unit was not on the child's floor.

The Landlord testified that they did make an effort to re-rent the Tenant's unit as supported by the calendars provided in their evidence which lists showing dates. She confirmed that the Tenant's Witness would not have normally been shown the Tenant's unit because it is located on the second floor and it is the Landlord's policy to place Tenants with children on the ground level. The rental unit was re-rented effective May 1, 2010.

In closing the Tenant stated that he made no effort to find a replacement tenant and he stated he did not feel it was his responsibility because he was told he could not sublease the unit. He argues that he feels the Landlord was required to show his apartment and re-rent it as quickly as possible in good faith.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45 (2)(b) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the above, even though the Tenant provided the Landlord with notice that he was vacating the rental unit January 31, 2010, the tenancy agreement was still in effect and would not end until April 30, 2010. Therefore the Tenant was responsible to fulfill the requirements of the tenancy agreement until such time as the agreement ended.

In this case the Landlord upheld their requirements under the Act and there is no evidence to support the Landlord violated the Act, Regulation, or tenancy agreement. Therefore the Tenant has failed to provide sufficient evidence to prove the test for damage or loss, as listed above, and I hereby dismiss his claim.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: September 29, 2010.

---

Dispute Resolution Officer