

## **Decision**

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

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit / “utility deposit”, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the 10 month fixed term of tenancy was from November 1, 2009 to August 31, 2010. Rent of \$1,825.00 was payable on the first day of each month. The tenancy agreement shows that a security deposit of \$912.50 was to be collected. I am satisfied that arising from a previous tenancy agreement between the parties, a security deposit of \$850.00 and a “utility deposit” of \$200.00 were collected on July 18, 2008, and that a further \$62.50 was paid toward the security deposit on September 13, 2009. A move-in condition inspection & report were done on October 30, 2009.

In her evidence the tenant states that, “When I found it necessary to move from the residence, one month before the end of the lease, I notified the owner May 20<sup>th</sup>, 2010, nearly 40 days before the July 1, 2010, the move date.” Ultimately, the tenant vacated the unit effective on or about June 30, 2010. However, as the parties were not able to agree that the unit had been left in a sufficiently reasonable condition, the tenant continued with some additional cleaning until on or about July 15, 2010 when the parties

completed a move-out condition inspection & report together. New tenants entered into a tenancy agreement on or about July 6, 2010, for a tenancy beginning effective from August 1, 2010.

The landlord seeks compensation for loss of rental income for July 2010. The tenant (who issued a stop payment on her post dated rent cheque for July 2010), disputes that she is obligated to pay July's rent, arguing that it was the nature of the landlord's involvement in the new tenant selection process that unnecessarily delayed achievement of the goal to find new tenants effective July 1, 2010.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution. Matters discussed included, but were not necessarily limited to, what steps the tenant had undertaken to find new tenants, what requirements the landlord had in relation to what would constitute suitable tenants, what discussions took place between the parties in regard to the tenant's post-dated rent cheque for July 2010, the tenant's reluctance to provide the landlord with a forwarding address immediately after vacating the unit, and so on. Despite their efforts, however, the parties were unable to resolve the dispute.

### **Analysis**

While I have turned my mind to all the documentary evidence and testimony, not all details of the respective submissions and / or arguments are reproduced here.

Section 45 of the Act speaks to ending a tenancy and, in particular, to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

In the addendum to their tenancy agreement, a clause speaks specifically to “Assign or Sublease,” and provides in part:

Tenant may not assign or sublease without approval from Landlord in writing, such approval not to be unreasonably withheld or delayed. If Tenant wishes to vacate the premises prior to the expiration of the term hereof, or any future renewal tenancy created, and Tenant finds a new tenant to rent the premises, the Landlord will be prepared (subject to the approval provided above) to accept an assignment to the new tenant for the balance remaining on the term of the lease or at the Landlord’s option, enter into a new lease with the new tenant and, in either case, the Landlord will release the Tenant from any further obligations hereunder.

Section 34 of the Act speaks to **Assignment and subletting**. Residential Tenancy Policy Guideline #19 also addresses “Assignment and Sublet,” in part as follows:

It may be reasonable to withhold consent if reference or credit checks indicate that a prospective tenant is unlikely to adhere to the terms of the tenancy agreement.

In the circumstances of this dispute, one of the landlord’s requirements was that prospective new tenants must complete an application form. The landlord also required that prospective new tenants be assessed to his satisfaction in relation to, among other things, their perceived compatibility with the needs of other tenants already renting in the downstairs portion of the house wherein the subject unit is located.

As to assessment of a prospective new tenant's suitability, while the landlord considers that his involvement and particular requirements were reasonable and consistent with the terms of the tenancy agreement / addendum, the tenant takes the position that the landlord unnecessarily delayed the process by being unreasonably particular, by introducing a requirement that prospective new tenants meet the test of compatibility with the pre-existing tenants, and by being difficult at times to contact.

Having considered the documentary evidence and testimony of the parties, I find that they undertook somewhat informally, but in good faith, to work together to achieve the goal of finding tenants to move into the unit effective July 1, 2010. There is no evidence of a formal notice to end tenancy; there is no evidence of the parties having entered formally into a "mutual agreement to end a tenancy;" there is no evidence of a written request from the tenant to assign or sublet the tenancy; and there is no evidence of consent in writing by the landlord concerning assignment or sublet.

While the landlord seeks compensation for loss of rental income for July, had success in finding new tenants not been achieved when it was, the claim could well have included August 2010, the final month in the fixed term of tenancy. If there is a question around whether or not the landlord's requirements were reasonable, I find that it arises principally in regard to his insistence that prospective new tenants be compatible with the perceived needs of his already existing tenants. It appears that as the process of searching for new tenants unfolded, this requirement became clear in a way that it was not clear at the outset of the process. Had this not been so critical a requirement, or had it been unequivocally clear at the outset of discussion between the parties, it is arguable that new tenants could have been found effective before August 1, 2010.

In view of the above and in consideration of all the other documentary evidence and testimony, I find that the landlord has established entitlement to \$1,487.91. This is comprised as follows:

- \$1,412.91: one month's rent for July less one week's rent (7 days), calculated as follows:

$\$1,825.00 \text{ (monthly rent)} \div 31 \text{ (\# days in July)} = \$58.87 \text{ (per diem)}$

$\$58.87 \text{ (per diem)} \times 7 \text{ (\# days in 1 week)} = \$412.09 \text{ (1 week's rent)}$

$\$1,825.00 \text{ (monthly rent)} - \$412.09 \text{ (1 week's rent)} = \underline{\$1,412.91}$

- \$25.00: fee for "stop payment cheque." While the addendum provides for a fee of \$50.00, pursuant to section 7 of the Regulation the maximum fee permitted is \$25.00.
- \$50.00: filing fee

I order that the landlord retain the full amount of the combined security deposit and "utility deposit" of \$1,112.50 (\$912.50 + \$200.00), plus interest of \$7.19 [total: \$1,119.69], and I hereby issue a monetary order in favour of the landlord for the balance owed of \$368.22 (\$1,487.91 - \$1,119.69). In the absence of any evidence of costs incurred arising from damage to the unit, the landlord's application for compensation related to same is hereby dismissed.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord for \$368.22. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 23, 2010

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Dispute Resolution Officer