

## **DECISION**

Dispute Codes      OPB, MND, MNDC, FF, O

### Introduction

This hearing dealt with applications by the landlord and tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord originally applied for:

- an Order of Possession for the tenant's alleged breach of a term of the residential tenancy agreement pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the 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;
- release from her one-year fixed term tenancy agreement; and
- authorization to recover his filing fee for this application from the landlord 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. I accepted the landlord's revision of her application by removing the request for an Order of Possession.

The tenant testified that she sent the landlord a copy of her application for dispute resolution hearing package by registered mail on July 9, 2010. She provided a Canada Post Tracking Number to confirm this mailing. The landlord confirmed having received this material from the tenant. The landlord testified that she sent a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant by fax and by email on July 6, 2010. The tenant confirmed receiving this notice. The landlord testified that she sent the tenant a copy of her application for dispute resolution hearing package by registered mail to the business address the tenant had provided to her for mailing purposes on October 29,

2010. The landlord provided a Canada Post Tracking Number to confirm this mailing. The landlord also provided written evidence to confirm that the registered letter was accepted at the tenant's place of work.

The tenant testified that she did not receive the landlord's application for dispute resolution or the landlord's evidence package. However, she said that she was aware that the landlord was holding her to the financial terms of her tenancy agreement which required her to pay rent until the end of the tenancy on December 31, 2010. She said that she had prepared before the hearing to provide evidence to seek a release from her financial obligations under the fixed term tenancy agreement. She also knew that the landlord was seeking a monetary award for damage to the rental unit arising out of her tenancy. Since she was prepared to speak to these issues on the basis of her own claim for a monetary award, the tenant said that she wanted to proceed with the dispute resolution hearing of both applications. Under these circumstances, I accepted that both parties had been adequately served with the applications for dispute resolution and were not prejudiced by proceeding with this hearing.

#### Issues(s) to be Decided

Are either of the parties entitled to a monetary award for loss arising out of this tenancy?  
Is the landlord entitled to a monetary award for damage to the rental unit? Are either of the parties entitled to recover their filing fees for their applications?

#### Background and Evidence

This one-year fixed term tenancy for a rental unit in a large strata complex commenced on December 11, 2009. According to the terms of this fixed term tenancy agreement, the tenant was required to pay \$1,000.00 in monthly rent until the end of this tenancy on December 31, 2010. The landlord continues to hold the tenant's \$500.00 security deposit and her \$500.00 pet damage deposit paid on or about November 27, 2009. The landlord issued a One Month Notice to End Tenancy for Cause on May 25, 2010. Discussions occurred between the landlord and tenant arising out of that notice and the tenant's request for a reduction in rent for disturbance and repairs that were required to

her rental unit in June 2010. The landlord entered into evidence a series of emails in which proposed options to resolve the tenant's June 2010 concerns were considered.

On June 2, 2010, the landlord presented the tenant with the following two options to resolve their differences:

1. You stay, I will refund \$500 as we agreed and you pay off late charges.
2. You move out on July 31<sup>st</sup> with no penalty for breaking the lease. No refund, no reimbursement from me.

After exchanging additional emails, the parties entered into a signed agreement on June 6, 2010, in which:

- the landlord agreed to refund \$500.00 from the tenant's June 2010 rent and to cancel the May 25, 2010 eviction notice;
- the tenant agreed to not pursue "any further compensation for any issues which have happened, neither in terms of monetary or any other forms" and to pay late charge fees of \$50.00 for February and March 2010.

Twenty-three days later, on June 29, 2010, the tenant sent the landlord a letter advising her that she was planning to vacate the rental unit by July 31, 2010. The tenant did not pay any rent for July 2010, but asked the landlord to apply her pet damage and security deposits towards rent for July 2010. The landlord provided no written agreement to this request. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent for July 2010 on July 6, 2010. The tenant vacated the premises on July 26, 2010.

The tenant applied for a monetary award of \$3,000.00 to compensate her for her loss of quiet enjoyment during the course of her tenancy. She submitted oral and written evidence regarding the noise from another tenant, security and noise concerns within and outside her building, and unchecked criminal activity that she said was not addressed during her tenancy.

The landlord applied for a monetary award of \$2,000.00 for lost rent in August and September 2010, despite advertising the availability of the rental unit. She said that she was able to rent the premises for October 2010 at a monthly rental rate of \$1,000.00. The tenant paid no rent for July 2010. The landlord also applied for a monetary award of \$100.00 for damage to walls arising out of this tenancy.

### Analysis

#### Tenant's Application for Monetary Award

Based on the evidence presented, I dismiss the tenant's application for a monetary award. She knew when she entered into the fixed term tenancy agreement that this was a strata complex. She was aware that the landlord could not take action herself to obtain evictions or enforce the rules of the strata council. In early June 2010, the landlord offered the tenant an opportunity to end her tenancy early without responsibility for the landlord's lost rental beyond July 31, 2010. The tenant decided to remain in this tenancy and accept the landlord's offer of a \$500.00 rent reduction for June 2010 to compensate her for the reduced services that month and her inconvenience.

The tenant has failed to demonstrate that her concerns about loss of quiet enjoyment of her rental unit, including noise, disturbances and security, were the responsibility of the landlord. I am satisfied that the landlord attended to the tenant's concerns to the extent that is reasonable and was not responsible for the tenant's loss of quiet enjoyment of her rental unit.

#### Landlord's Application for Monetary Award for Lost Rent

The tenant signed a one-year fixed tenancy agreement that was to end on December 31, 2010. Based on my review of the written and oral evidence, I find that the tenant knew that she remained responsible for rent to the landlord for the duration of this tenancy. When the landlord realized that the tenant was very unhappy with the conditions of her tenancy, the landlord offered the tenant an opportunity to end her fixed term tenancy agreement by July 31, 2010 without holding her responsible for the remaining months of that agreement. Although not bound by the terms of the parties'

June 6, 2010 agreement, I find that the tenant remained responsible for the terms of her tenancy agreement in accordance with section 7(1) of the *Act*. Her June 29, 2010 notice to end this tenancy prematurely contravened the terms of that agreement.

Section 7(2) of the *Act* also required the landlord to take measures to mitigate the tenant's losses arising from her contravention of the tenancy agreement by attempting to rent the premises to another tenant. The tenant did not dispute the landlord's testimony that she tried to rent the premises to someone else as soon as possible. I am satisfied that the landlord met her duty under section 7(2) to mitigate the tenant's losses. I find that the tenant is responsible for the landlord's lost rent of a total of \$2,000.00 for August and September 2010 and I issue a monetary award to this effect.

Although the landlord did not apply to retain the tenant's pet damage and security deposits, in accordance with the offsetting provisions of section 72(2) of the *Act*, I allow the landlord to retain these deposits plus interest to offset the tenant's unpaid rent of \$1,000.00 for July 2010. No interest is payable over this period.

#### Damage to Rental Unit

The parties discussed this aspect of the landlord's application during the hearing. They agreed that the landlord will receive a monetary award of \$50.00 for this damage, which I agreed to include in the monetary Order outlined below.

#### Filing Fees

As the landlord was successful in her application, I allow her to recover her filing fee for this application from the tenant. I make no such finding regarding the tenant's filing fee.

#### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to retain the tenant's pet damage and security deposits and to recover the landlord's filing fee for this application:

<b>Item</b>	<b>Amount</b>
Unpaid July 2010 Rent	\$1,000.00
Landlord's Loss of Rent August 2010	1,000.00
Landlord's Loss of Rent September 2010	1,000.00
Less Pet Damage & Security Deposits	-1,000.00
Damage to Walls	50.00
Recovery of Landlord's Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$2,100.00</b>

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.

I dismiss all aspects of the tenant's application.

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*.