

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for compensation for damage or loss; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order for loss of rent for the month of September, 2010, and to recover the cost of the penalty for cancelling a planned trip?

### **Background and Evidence**

The Landlord and Tenants entered into a tenancy agreement on August 15, 2010. A copy of the tenancy agreement was entered in evidence. The tenancy agreement does not disclose the start-of-tenancy date, but indicates "for a fixed length of time: one [uncompleted] ending on 31 August 2011".

Monthly rent was \$1,500.00. the Tenants paid a security deposit in the amount of \$750.00 on August 15, 2010. The Tenants wrote to the Landlord on August 18, 2010, stating that they had changed their minds and were not interested in moving into the rental unit.

The Landlord gave the following testimony and documentary evidence:

When the Tenants signed the rental agreement, they agreed to move into the rental unit on August 23, 2010 and to pay prorated rent in the amount of \$450.00 for the period between August 23, 2010 and August 31, 2010.

The Landlord had no hope of re-renting the rental unit for September 1, 2010. She panicked and put the property up for sale. The Landlord sold the rental unit at the end of August, 2010. The sale completed on September 15, 2010. The Landlord seeks loss of rent for the month of September, 2010.

After the Tenants signed the rental agreement, the Landlord booked a flight to China. She could not have afforded to go on the trip if the Tenants had not agreed to rent the rental unit. After the Tenants broke their promise to rent the rental unit, the Landlord had to cancel her plane tickets. The Landlord had to pay a cancellation fee in the amount of \$280.00, which she seeks to recover from the Tenants.

The Tenants and their witness gave the following testimony:

The Tenants did not agree to move into the rental unit on August 23, 2010. The tenancy was to start on September 1, 2010.

The Tenants viewed the rental unit on August 14, 2010. The Tenants had just moved to Canada and did not realize the difference between a den and a bedroom. The Landlord advertised the rental unit as a two bedroom, but it was actually a one bedroom and a den, because the den had no closet. The Tenants signed the contract in a rush.

The Tenants tried to find a new tenant for the rental unit by advertising the rental unit for two weeks. No one would rent it because it was too small and overpriced for a one bedroom and a den. The Tenants found a two bedroom apartment two blocks away from the rental unit for \$1,200.00 a month rent. A two bedroom unit in the same building as the rental unit is renting for \$1,400.00 a month.

The Landlord gave the following reply:

This was the first time she had attempted to rent out an apartment. The den was as big as a bedroom and in China it would be called a bedroom.

### **Analysis**

The Tenants viewed the rental unit on August 14, 2010, accepted the rental unit and signed a tenancy agreement on August 15, 2010. Whether the rental unit was a two bedroom apartment or a one bedroom apartment with a den and whether or not it was over-priced, is not relevant. A tenancy agreement is a legal document.

Section 45 of the Act provides for how a tenant can end a tenancy. The Tenants did not comply with the Act. They did not provide a minimum of 30 days written notification to the Landlord. In addition, this was a fixed term lease and the Tenants remained responsible to the Landlord for potential loss for the remainder of the term.

I find that the Tenants did not comply with the Act with respect to ending the tenancy and the Landlord is entitled to compensation.

The parties did not agree on the start of tenancy date. Based on the written tenancy agreement, and the fact that the term of the tenancy was to expire on August 31, 2011, I find that the tenancy was to begin on September 1, 2010. The Landlord seeks compensation for loss of rent for the month of September, but chose to sell the rental unit. The new owners took possession of the rental unit on September 15, 2010. Therefore, I find that the Landlord is entitled to compensation for loss of rent from September 1, 2010 to September 15, 2010 (one half of a month's rent).

The Landlord is holding the Tenant's security deposit, in the equivalent of one half a month's rent. Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit in full satisfaction of her monetary award.

The Landlord seeks to recover the cost of cancelling airfare. I dismiss this portion of the Landlord's claim for two reasons:

- 1) The Landlord's Application for Dispute Resolution discloses only a monetary claim in the amount of \$1,500.00 for loss of rent for the month of September, 2010; and
- 2) The Act does not allow for recovery of this nature.

I find that the Landlord has been adequately compensated and I dismiss the Landlord's application to recover the cost of the filing fee from the Tenants.

### **Conclusion**

The Landlord has established a monetary award in the amount of \$750.00. The Landlord may apply the security deposit in full satisfaction of her monetary award.

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: December 08, 2010.

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