

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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 his filing fee for this application from the tenant 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. The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on October 6, 2010. He provided a Canada Post Tracking Number to confirm this mailing. The tenant confirmed that she received this package. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*. I am also satisfied that the parties exchanged their evidence packages with one another in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for his loss of rent arising out of this tenancy? Is the landlord entitled to recover his filing fee from the tenant?

### Background and Evidence

The parties signed a Residential Tenancy Agreement on September 1, 2010, calling for the tenant to take occupancy of the rental unit on October 1, 2010. Monthly rent was set at \$850.00, payable on the first of the month. The landlord continues to hold the tenant's \$425.00 security deposit plus interest.

The parties agree that the tenant sent the landlord an email on September 8, 2010, advising that her employer was transferring her to another community and that she would not be able to take occupancy of the rental premises. The landlord testified that since he was in South Africa from September 4, 2010 to September 20, 2010 he had let her know that email was the only way to contact him over that period.

The tenant did not move in, but attempted to locate another tenant for the landlord. She placed a rental advertisement on Craigslist and received many expressions of interest in this rental unit. She attempted to make arrangements for an "Open House" with both the existing tenant whose tenancy did not end until September 30, 2010 and the landlord to show the rental unit to those responding to her Craigslist advertisements. As

she was not yet the tenant and did not obtain occupancy of the rental unit until October 1, 2010, she could not show the rental unit to any of these prospective tenants.

The landlord testified that he was able to find a new tenant for the rental unit the day after he returned from South Africa. He signed this new tenancy agreement on September 21, 2010 to commence a new tenancy on November 1, 2010. Monthly rent for this new one-year fixed term tenancy was set at \$875.00. He said that he signed this new agreement because the tenant was not planning to take possession of the rental unit on October 1, 2010 and was seeking his assistance to mitigate her potential losses during her fixed term tenancy. He said that emails exchanged between the landlord and the tenant entered into written evidence demonstrated the tenant's interest in re-renting the suite she had committed to occupy as soon as possible.

The landlord applied for a monetary award of \$850.00 to recover the rent that the tenant did not pay for October 1, 2010. He also applied for recovery of his \$50.00 filing fee.

#### Analysis

The parties agree that the tenant made a written commitment to the landlord to pay monthly rent of \$850.00 from October 1, 2010 until September 30, 2011. The tenant's changed work location required her to end this tenancy agreement before she moved into the rental unit. Section 16 of the *Act* establishes that the rights and obligations of a landlord and tenant "take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit."

The tenant did not provide her notice to end this fixed term tenancy in writing as required by section 52 of the *Act*. However, as the landlord had told the tenant that he was going to be out of the country for some time, the landlord did not object to this method of being informed of the end to this tenancy. The extensive email evidence submitted into written evidence confirms that the parties conducted most of their interaction surrounding this matter by email. I accept that due to these circumstances the tenant was able to end this tenancy by emailing the landlord of her intentions.

In accordance with section 7(1) of the *Act*, I find that the tenant did not comply with her tenancy agreement and as such must compensate the landlord for the loss he experienced. This matter is not in dispute. However, section 7(2) of the *Act* requires the landlord in this case to do whatever is reasonable to minimize the tenant's loss. The parties dispute the extent to which the landlord took reasonable actions to mitigate the tenant's exposure to losses resulting from her failure to comply with the terms of her fixed term tenancy agreement.

I do not find it unreasonable that the landlord or the previous tenant were unwilling to allow the tenant to conduct an Open House in a rental unit before the tenant was legally entitled to take occupancy. By that time, the tenant had paid only her security deposit and had not made any rent payment to the landlord which was not due until October 1, 2010.

In the hearing, the landlord noted that the tenant agreed in her September 10, 2010 email to pay another \$425.00 (in addition to her security deposit) for her October 2010 rent. However, she stated in that email that she did not wish to make this payment until October 1, 2010, when her rent was due. The tenant never did make a rent payment to the landlord.

I accept the landlord's evidence that he was out of the country until September 20, 2010. I also accept the landlord's undisputed evidence that he took action the day after he returned to try to determine if prospective tenants he had identified in his previous search for a tenant for this rental unit remained interested in renting this suite. The landlord said that he had already conducted a successful credit check on some of these prospective tenants and found that this method of securing a new tenant was the most effective and least costly way of minimizing the tenant's exposure to losses.

In choosing his approach to re-renting this suite, the landlord did not ask the tenant for the contact information for any of more than 40 people who responded to the tenant's Craigslist advertisement. While some of these individuals may have been able to move into the rental unit sooner than November 1, 2010, the tenant admitted that none of these individuals had inspected the rental unit, nor had any reference or credit checks been conducted on them. Under these circumstances, I find that the landlord took reasonable measures to mitigate the tenant's loss by finding and obtaining a suitable tenant who was able and willing to pay a higher monthly rental than the tenant was committed to paying as of November 1, 2010.

For these reasons, I allow a monetary award in the landlord's favour in the amount of \$850.00, to recover the landlord's loss of rent for October 2010.

However, the landlord was able to obtain \$25.00 in additional monthly rent from the tenant who occupied the unit as of November 1, 2010 for the 11-month period until September 30, 2011. I find that the landlord's monetary award should be reduced by \$275.00 for this 11 month period as a result of the landlord's successful efforts to mitigate the tenant's losses.

The landlord testified that he continues to hold the tenant's security deposit of \$425.00 plus interest from September 1, 2010 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. Since the landlord was successful in his application, I also allow him to recover his \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour which allows the landlord to recover his rental loss during the course of the tenant's fixed term tenancy, to recover his filing fee for this application and to retain the tenant's security deposit.

<b>Item</b>	<b>Amount</b>
Unpaid October 2010 Rent	\$850.00
Less Difference Between Monthly Rental from November 1, 2010 until September 30, 2011 under New Tenancy vs. this Tenancy (11 months @ \$25.00 = \$275.00)	-\$275.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$200.00</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.

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*.