

## **Decision**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to either or both of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on February 15, 2010. Monthly rent was \$1,100.00 and a security deposit of \$300.00 was collected.

Pursuant to section 47 of the Act (**Landlord's notice: cause**), the landlord issued a 1 month notice to end tenancy dated May 15, 2010. The reason for its issuance is noted manually on the notice by the landlord as follows:

I would like to renovate the upstairs suite

It appears that the tenants informed the landlord that in view of his stated reason for ending the tenancy, the 1 month notice was not the proper notice. Thereafter, pursuant to section 49 of the Act (**Landlord's notice: landlord's use of property**), the landlord issued a 2 month notice to end tenancy dated on what appears to be July 14, 2010. The reason shown on this notice for its issuance is as follows:

The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord noted manually on the bottom of the first page of the 2 month notice, as follows:

I am agreed that tenant can move out anytime no 10 days notice required.

Following this, the tenants vacated the unit on or about July 30, 2010. While the landlord returned the tenants' security deposit, the tenants claim that the landlord did not compensate them in the amount equivalent to 1 month's rent, pursuant to section 51 of the Act (**Tenant's compensation: section 49 notice**).

The landlord states that he undertook some repairs in the bathroom, which included but were not necessarily limited to, work on the walls and the floor. The landlord states that new renters took possession of the unit effective September 1, 2010.

On a subsequent visit to the unit in order to determine whether any mail had been delivered to them there, the tenants claim they observed that no major repairs or renovations had been undertaken in the unit since they moved out. They further claim that the landlord made comments to the effect that new renters either already had, or would be taking possession of the unit effective on or about August 15, 2010. In the result, the tenants seek additional compensation in the amount of double the amount of monthly rent pursuant to section 51 of the Act.

The final aspect of the tenants' claim principally concerns an allegation that over a 5 month period, access to the back yard adjacent to the unit was not available to the tenants' children. Accordingly, the tenants seek compensation in the amount of \$150.00 for each of 5 months for a total of \$750.00. Documentary evidence in support of this claim is limited to an e-mail statement dated January 28, 2011 from a person who visited the tenants with her own two children sometime during the first week of July 2010; in the e-mail, the tenants' visitor claims that on the occasion of the visit the landlord instructed the tenants' children and the visitor's children that they were not allowed to play in the yard and that they should go to a park.

During the hearing the parties frequently spoke over one another and accused each other of not telling the truth. While some very limited consideration was given by the parties during the hearing to achieving a resolution of the dispute, ultimately these efforts were unsuccessful.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the parties reached agreement whereby the landlord's initial attempt to end tenancy pursuant to issuance of a 1 month notice was disregarded, and the tenancy was effectively ended pursuant to the landlord's subsequent issuance of the 2 month notice.

Section 51 of the Act provides that notice to end tenancy pursuant to section 49 of the Act, entitles the tenants "to receive from the landlord on or before the effective date of

the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement." Having considered the documentary evidence and testimony, I find that as the landlord made no such payment, the tenants have established entitlement to compensation in the amount of \$1,100.00, which is equivalent to 1 month's rent.

I further find on a balance of probabilities that the landlord did not undertake any repairs or renovations in the unit which required the unit to be vacant. Rather, I find that the landlord had other reasons for wanting to end this particular tenancy and, therefore, that the landlord's issuance of the 2 month notice was not made in "good faith." Accordingly, I find that as "steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice," the tenants have established entitlement to \$2,200.00, which is "the equivalent of double the monthly rent" (2 x \$1,100.00).

As to the tenants' claim for compensation arising from the alleged restriction of use of the property over a 5 month period, I find there is insufficient evidence to support such a claim. For example, further to the limited evidence earlier referenced, there is no evidence of the tenants having taken this concern to the landlord's attention during the term of the tenancy, and no evidence that the tenants sought a reduction in rent by filing an application for dispute resolution, on the basis that services or facilities agreed upon were not provided. In the result, this aspect of the application is hereby dismissed.

As the tenants have achieved a significant measure of success with their application, I find they are entitled to recover the \$50.00 filing fee.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants for **\$3,350.00** (\$1,100.00 + \$2,200.00 + \$50.00). This order may be served on the landlord, filed in the Small Claims Court and enforced as an order 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*.

DATE: February 9, 2011

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Residential Tenancy Branch