

## **DECISION**

### **Dispute Codes:**

**Landlord:** MNR, MNDC, MND, MNSD, and FF  
**Tenant:** MNDC and MNSD

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of October 20, 2010, the landlord seeks a Monetary Order for unpaid rent/loss of rent, damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. The landlord claims loss of rent on the grounds that the tenant breached a fixed term rental agreement.

By application of November 17, 2010, the tenant seeks a Monetary Order for damage or loss under the legislation or rental agreement and return of the security deposit on the grounds that the landlord acted unconscionably in forcing her to sign the fixed term agreement after the tenancy had begun.

### **Issues to be Decided**

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted taking into account whether damages are proven, whether they are attributable to the tenant, whether the amounts claimed are reasonable and proven, and whether the landlord has taken reasonable steps to minimize the losses.

The tenant's application similarly requires a decision on the merits of the claim for damage or loss and whether the security deposit remains available after the landlord's prior claim has been considered.

Both applications require a decision on whether a fixed term agreement dated September 1, 2010 is binding or whether it is compromised.

### **Background, Evidence and Analysis**

This tenancy began on September 1, 2010 although the tenant was granted occupancy on August 24, 2010 at no charge for the balance of the month. Rent was \$2,800 per month and the landlord holds security and pet damage deposits of \$1,100 each, both paid on August 10, 2010.

The rental agreement, dated September 1<sup>st</sup> or 2<sup>nd</sup>, 2010 which is in dispute specifies that the tenancy was to be for a fixed term ending on February 28, 2011.

The tenant vacated on October 5, 2010.

This matter was somewhat confused by apparent vacillation by both parties and a plethora of evidence including multiple copies of emails and numerous redundant photographs and materials not directly relevant to the matters in dispute.

During the hearing, they gave evidence that the tenant had first viewed the rental unit in late July 2010 and the parties had subsequently agreed to a tenancy which, according to the tenant was to be on a month to month basis.

There was some disagreement on the amount of rent being variously \$2,800 per month to \$3,000 per month with some disagreement as to whether the lower figure obliged the tenant to do repairs.

In any event, the parties agreed at the hearing that \$2,800 was the monthly rent consistent with the verbal agreement between the parties for a month to month tenancy although the tenant, having just come from an 11 year tenancy, had expressed her hopes for another long term tenancy.

However, matters seem to have taken a turn for the worse when the landlord, after some urging for clarification from the tenant arrived with a rental agreement for the tenant to sign. The tenant said it was on September 2, 2010 and the landlord said it was on September 1, 2010.

The tenant stated that she was shocked to see that the written agreement was for a fixed term of six month at \$3,000 per month and appeared to oblige her to do repairs. The tenant and a witness with some building experience gave evidence that the rental unit and property had suffered obvious neglect and the witness added that he was taken aback when the tenant gave paid the security and pet damage deposits without getting a receipt.

The tenant stated that when she raised objections with the landlord about the terms of the fixed term agreement, the landlord threatened to walk away and put the property up for sale as it had been previously. The tenant stated that the change and threat had put her and her children into a crisis out of fear that they would be dispossessed of the home and she signed the rental agreement under duress.

The tenant stated that she had advised the landlord before they made the verbal agreement that she anticipated a surgical procedure in December and that having suffered some medical challenges through the summer, it was vitally important to her to have a stable tenancy. She had also shared with the landlord information that with student loans, she had to take care with her budget and unnecessary moving expenses would pose a burden.

At that point, a number of conflicts were brewing. The tenant had noted a number of deficiencies in the rental unit (gutters needing repair, leaking tub, thistles in the yard, etc.) and wished to have them acknowledged in the rental agreement.

The tenant stated also that there was a tenant still living in a trailer in the yard beyond the September 1<sup>st</sup> date on which the landlord had stated he would be vacated and another party was renting a shed on the property and both drew electricity from the tenant's meter. The tenant eventually filed a complaint with the local by-law enforcement office which confirmed the arrangement was non-conforming.

By September 11, 2010, the tenants still did not have a key for the community mail box and the landlord had delivered mail to the residence only once.

On September 11, 2011, in an exchange of emails in which the tenant complained about still not having a key for the mail box, the landlord's reply to the tenant included the statement: "Would you prefer not to rent from me? We can discuss that if you like."

On September 16, 2011, the tenant wrote to the landlord: "I'm going to look at a place tonight. Would you be agreeable to us leaving on October 1<sup>st</sup>," to which the landlord replied, "I am." The tenant responded with, "Wonderful, I'll let you know later."

In a later email that day the landlord informed the tenant that it had come to her attention that the tenant had illegal drugs on the property, an allegation to which the tenant took great offence.

By letter of September 30, 2010, the tenant gave notice that she would be vacating the rental unit on October 31, 2010, and subsequently left the rental unit on October 5, 2010.

The parties concurred that the tenant had a rent shortfall for September of \$500. She did not pay rent for October and the landlord issued a 10-day Notice to End Tenancy on October 2, 2010.

The landlord also makes claim for costs of cleaning and painting.

## **Analysis**

I find that by the exchange of emails of September 16, 2010 in which the tenant enquired of the landlord whether she would be willing to end the tenancy early to which the landlord replied, "I am," the landlord released the tenant the fixed term agreement. If the landlord had intended for that release to be conditional on the tenant paying for loss of rent, she would need to have included that caveat in her reply.

Having so found, I must dismiss the landlord's claims for loss of rent for November and December 2010.

However, even considering this as a month to month tenancy, the tenant was obliged to give a full month's notice under section 45 of the *Act*. In addition, as agreed by the parties, I find that the tenant continues to owe the landlord the \$500 rent shortfall from September 2010.

As to the landlord's claim for damages, in the absence of move-in and move-out condition inspection reports for comparison purposes, and taking into account considerable work done on the property claimed by the tenant and illustrated by her photographic evidence, I cannot make an award for damage to the rental unit.

As to the tenant's claims for harassment, I find that the landlord's release of the tenant from the fixed term agreement is ample compensation for any disruption to the tenant and her family.

I find that both parties should remain responsible for their own filing fees.

Thus, including authorization to retain the security and pet damage deposits which I award under section 72(2)(b) of the *Act* I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for September 2010	\$ 500.00
Unpaid rent for October 2010	<u>2,800.00</u>
Sub total	\$3,300.00
Less retained security deposit (No interest due)	- 1,100.00
Less retained pet damage deposit (No interest due)	<u>- 1,100.00</u>
<b>TOTAL</b>	<b>\$1,100.00</b>

## **Conclusion**

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,100.00 for service on the tenant.

March 1, 2011