

## **Decision**

Dispute Codes      MNSD, MNDC, FF

### Introduction

The landlord seeks a monetary award for rental loss, he seeks to retain the security deposit and recover the filing fee for the cost of this application.

Both parties appeared and gave evidence under oath.

### Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

### Background and Evidence

The landlord testified that the tenant advised him that she wished to end this tenancy. A few weeks later she advised that she had changed her mind and wished to stay. Yet a few weeks later she advised that she wished to move. The parties agreed that the tenancy would end at the end of October and on October 9, 2010 the landlord presented the tenant with a Mutual Agreement to End Tenancy. The tenant declined to sign it at the time stating she wished to review the document. The landlord therefore left the document with her.

In the meantime the landlord says he was able to secure a new tenant who was wishing to move in November 1, 2010. The landlord testified that the tenant who was to come in on November 1, 2010 wanted to be certain that the current tenant was vacating and therefore wished to be informed when the Mutual Agreement to End Tenancy was signed. The landlord testified that he had to leave town so he appointed JC to act on his behalf. The landlord made several attempts to get the signed Mutual Agreement to End Tenancy back from the tenant in order to reassure the incoming tenant that the rental unit would be ready for her tenancy to begin on November 1, 2010. However, the landlord says this tenant never returned the signed Mutual Agreement to End Tenancy. Upon hearing that the landlord did not have a signed Mutual Agreement to End Tenancy from this tenant the tenant who was to move in declined to do so. The tenant never returned the signed document to the landlord until she gave it to JC on October 22, 2010. The landlord says he lost the November 1<sup>st</sup> tenant and all the income for November. He did secure a new tenant for December 1, 2010 but wishes to be compensated for the lost rent for November in the sum of \$1,700.00.

The tenant says that through their verbal discussions the landlord always knew she intended to vacate at the end of October and the unit would be available to the incoming tenant. The tenant says the landlord told her she could return the signed Mutual Agreement to End Tenancy at the move-out inspection.

The landlord responded that he never told the tenant she could return the agreement at the end of the tenancy and he needed it to reassure the next tenant that the rental unit would be available to her on November 1, 2010.

### Analysis

Even though the parties may have agreed verbally to end this tenancy at the end of October 2010 at Section 44 the *Residential Tenancy Act* states:

#### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [*tenant's notice*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;**
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

There is no provision for ending the tenancy by way of verbal agreement. I therefore find that the landlord was left in a very difficult position, he had no written confirmation as required by the Act that this tenant was vacating. Without the written notice he could not confirm for the intended incoming tenant that the rental unit would actually be available to her on November 1, 2010 and she decided to look for another rental unit. I therefore find that in not returning the signed Mutual Agreement to End Tenancy on October 31, 2010 to the landlord until October 22, 2010 the landlord suffered a loss of rental income for November 2010.

I will therefore allow the landlord's claim as requested and to realize the sum requested I direct that the landlord retain the pet and security deposits each in the sum of \$850.00 for a total of \$1,700.00.

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*.

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