

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants 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 female tenant (the tenant) confirmed that the landlord's male friend handed copies of the landlord's application for dispute resolution to the male tenant on or about July 9, 2011. The tenant confirmed that she received a copy of this package. I am satisfied that the landlord served the hearing packages to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This one-year fixed term tenancy commencing on June 1, 2010 was scheduled to end on May 31, 2011. Monthly rent according to the residential tenancy agreement was set at \$1,300.00, payable in advance on the first of each month. The parties testified that the landlord agreed to deduct a \$100.00 credit from the monthly rent for the tenants' maintenance of the lawn during this tenancy. The landlord continues to hold the tenants' \$600.00 security deposit. The landlord did not receive a pet damage deposit from the tenants.

The landlord testified that the tenants vacated the rental unit without providing a written notice to end their fixed term tenancy. The landlord testified that in early February 2011 the tenants discussed their plans to end their tenancy early and move to another property. The landlord said that she and the female tenant commenced efforts in February 2011 to try to locate new tenants for the rental unit. The tenant testified that the tenants first discussed their plans to move with the landlord in January 2011.

The landlord said that the male tenant told her that the tenants would continue to pay rent but she did not receive any rent for March 2011. The tenant gave undisputed oral testimony that the tenants frequently missed the scheduled payment date for their rent, often paying their monthly rent as late as the 20<sup>th</sup> or 25<sup>th</sup> of a month. The landlord said that she did not realize the tenants had actually vacated the rental unit until March 14, 2011, when she posted a 24 hour inspection notice on the tenants' door. When she entered the rental unit the following day, she discovered that the tenants were no longer living there, although they had left some personal belongings there which did not exceed a value of \$500.00. She said that she changed the locks on March 15, 2011 when she realized that the tenants had abandoned the rental unit without leaving a forwarding address. She said that she called the tenants a number of times to try to complete a joint move-out condition inspection and to discuss their non-payment of rent, but she was unable to reach them. The parties agreed that the tenants never provided a forwarding address to the landlord.

The landlord applied for a monetary award of \$3,900.00 plus the recovery of her filing fee. This monetary award covers unpaid rent for March 2011 and the remaining two months of the tenants' fixed term tenancy agreement. The landlord testified that she applied for \$1,300.00 per month because this was what the tenancy agreement stated and the tenants were not maintaining the lawn as per their oral agreement after they vacated the rental unit.

She said that she attempted to rent the premises to a new tenant from February onwards and placed advertisements in three popular rental websites, the usual method of renting in her community. She said that she reduced the asking rent from \$1,200.00 to \$1,100.00 in May or June 2011. She said that she was eventually able to enter into a fixed term tenancy agreement with new tenants as of August 1, 2011, for a monthly rent of \$1,100.00. The tenant did not question or dispute any of the landlord's oral testimony.

The tenant testified that she started noticing black mould on the walls at the beginning of February 2011. She said that she has an asthmatic child and a newborn and she was concerned about the health impacts of the mould. She said that she tried to rent the premises out to potential tenants, but the 10 or 12 people who she showed the premises to prior to the locks being changed were not willing to rent the premises after they saw the black mould. She confirmed that the tenants did not pay rent for March 2011. She expressed surprise that the landlord changed the locks on March 15, 2011 because the landlord had allowed the tenants to pay their rent late every month during this tenancy.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the evidence presented by the parties, I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the May 31, 2011 date specified in that agreement. Even if they had provided the written notice to end this tenancy required to end a tenancy agreement (which they did not), the tenants would still be responsible for the payment of rent during the remainder of their fixed term tenancy agreement. I find that the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

In coming to this determination, I find little credibility to the tenant's claim that the tenants' responsibility for losses should be modified by the alleged presence of black mould on some of the walls of the rental unit. By the time the tenant said that she noticed the appearance of this mould, the tenants had already made arrangements to move to another location. The tenant testified that she and the landlord were already trying to find other tenants to take over the tenants' lease by that time. The tenant provide no photographs of this mould problem, nor did she provide any evidence that the tenants sent the landlord anything in writing regarding concerns that they may have had regarding this mould. The tenant provided no evidence from a health care professional regarding any health issues arising from the alleged appearance of this mould as they were preparing to end this tenancy. She provided no written evidence or witnesses to confirm that tenants were unwilling to rent the premises because of the landlord's omission to remove the mould. The tenants' behaviour in leaving the premises without formally notifying the landlord, without attending a joint move-out condition inspection, without paying rent for March 2011, without leaving a forwarding address and without returning the landlord's phone calls is not consistent with the assertion that the tenancy ended as a result of the tenants' concerns about the health effects of black mould in the rental unit.

There is undisputed evidence that the tenants did not pay any rent from March 1, 2011 until May 31, 2011, the last month of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The tenant's testimony confirmed that the tenants tried to rent the premises to someone else. I find that the tenant's efforts to re-rent the premises for the remaining months of their lease also demonstrate that the tenants understood that they might be held responsible for rent over the remaining months of their tenancy.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises as soon as she realized the tenants had abandoned their tenancy without leaving her a forwarding address. In a further attempt to mitigate the tenants' losses, the landlord reduced the asking rent. I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' losses.

I find that the tenant did not comply with the provisions of the *Act* regarding the ending of a fixed term tenancy agreement and also failed to meet the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

I accept the landlord's explanation for why she is entitled to a monetary award of \$1,300.00 per month for the last three months of this tenancy. I find that the landlord is entitled to a monetary award of \$3,900.00 for the final three months of this tenancy.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover \$1,300.00 for each of March, April and May 2011, to recover her filing fee for this application, and to retain the tenants' security deposit.

<b>Item</b>	<b>Amount</b>
Unpaid March 2011 Rent	\$1,300.00
Loss of Rent for April 2011	1,300.00
Loss of Rent for May 2011	1,300.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$3,350.00</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(s) 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*.