

## **DECISION**

**Dispute Codes:** MNDC, OLC, LRE, FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation, for an order to direct the landlord to comply with the *Act* and to suspend or set conditions on the landlord's right to enter the rental unit. The tenant also applied for the recovery of her filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the tenant entitled to compensation? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started in January, 2000. The monthly rent at the end of the tenancy was \$1,255.00 payable on the first of the month. On June 15, the tenant gave the landlord notice to end the tenancy with a request to allow her to end the tenancy on July 15, 2011. The landlord refused as rent was due on the first of each month and therefore the effective date of this notice to end tenancy was July 31, 2011. The tenant paid rent for the entire month of July. The landlord informed the tenant that if a new tenant moved in prior to August 01, 2011, he would return a prorated amount of rent. The new tenant moved in on July 30, 2011 and the landlord returned \$80.00 to the tenant.

The tenant moved out on July 15, 2011. She stated that she had found a new place for August 01, and the new landlord had agreed to allow her to move in mid July. The tenant gave the landlord her forwarding address and the security deposit was returned to the tenant.

The tenant stated that after she moved out, the landlord started doing some renovations in the rental unit without giving her notice of entry. The landlord stated that since the tenant had moved out and the unit was unoccupied, on July 19, he had painters and flooring finishers enter the unit for the purpose of preparing the unit for the next tenant. The landlord stated this work was necessary at the end of this tenancy of ten plus years.

On July 21, 2011, the tenant wrote a letter to the landlord advising him that even though she had moved out on July 15, she was still in possession of the unit and therefore no work should be carried out without notice to the tenant. On July 22, 2011, the landlord posted a notice to enter on the door of the unit, for the purpose of carrying out maintenance work.

The tenant stated that on July 23 she had to move out of her new place due to some repair work. She stated that she intended to move back into the dispute rental unit but was unable to because of the ongoing work. The tenant stated that she moved into a hotel and incurred a cost of \$1,919.26 for the period of July 23 to July 31, 2011.

The tenant filed a copy of the hotel invoice which consists of two pages. On the first page the arrival date is July 21, 2011 and the departure date is July 31, 2011. On the second page of the same invoice, the arrival date is July 29, 2011 and the departure date is **August** 31, 2011. In addition, on the first page, the date of the room charge for the first day of stay is July 24, (arrival date July 21) but the date of the tax charge immediately below the room rate is **August** 24, 2011.

The tenant is also claiming the return of rent for the latter half of July in the amount of \$627.04. During the hearing, when asked for a breakdown of her claim, the tenant calculated the balance of her claim by subtracting the return of rent plus the amount of the hotel invoice, from the total claim. She indicated that the balance of \$2,305.74 was for the inconvenience she endured, food purchased and for the loss of her deposit to a caterer, for a party she intended to host in the rental unit, at the end of July. The tenant did not file any evidence to support this portion of her claim nor did she provide a breakdown of the total amount. She stated that she paid the caterer in cash and therefore did not have a receipt.

The tenant testified that the landlord changed the locks on July 25, but her written submission states that the locks were changed on July 26.

The landlord testified that the tenant moved out on July 15 and the unit was unoccupied until the new tenant moved in on July 30. He stated that the maintenance work started on July 19 and stated that he did not give the tenant notice to enter because she was not living in the rental unit and had informed him that she had moved out. At the tenant's request, the landlord posted a notice to enter on July 22. The landlord agreed that he changed the locks on July 26 and allowed the new tenant in on July 30. The tenant has already received compensation in the amount of rent, for the last two days of July.

### **Analysis**

Based on the sworn testimony of both parties I make the following findings:

Since the tenancy has ended, the tenant's application for an order to direct the landlord to comply with the *Act* and to suspend or set conditions on the landlord's right to enter the unit, is no longer relevant.

The tenant offered testimony that contradicted her written submission. She stated that she had moved into the hotel on July 23 while the invoice shows the arrival date to be July 21 and the charge for the first day of stay as July 24. The dates on the invoice are inconsistent with other dates on the same invoice and also inconsistent with the tenant's testimony.

The tenant stated that she had to move out of her new rental unit to allow for renovations. I find on a balance of probabilities that it is unlikely that there would be a need for a newly rented unit to be renovated. In addition, even if renovations were done, it is unlikely that the work would require the tenant to move out of the newly rented rental unit. Therefore based on a balance of probabilities and the inconsistencies with both, the invoice and the tenant's testimony, I find that the tenant is not entitled to her claim of \$1,919.26.

The tenant gave notice on June 15, 2011 and pursuant to 45 (1) of the *Residential Tenancy Act*, a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Since rent is payable on the first of the month, the earliest the tenant could end the tenancy with a notice dated June 15, was July 31, 2011. Therefore rent for the entire month is payable and accordingly the tenant is not entitled to a refund of rent paid for July.

The tenant has claimed \$2,305.74 for the inconvenience she endured, for the cost of food during the latter half of July and for a lost deposit to host a party at the rental unit. The tenant did not file any evidence to support her claim. Based on the verbal testimony of the tenant, I find that any inconvenience she may have endured would have been related to her alleged need to move out of her new rental unit due to repair work. Therefore I find that the landlord is not liable for this inconvenience.

I also find that for lack of evidence the tenant has not established her claim for the cost of food and a lost deposit and therefore her claim for \$2,305.74 is dismissed.

Based on the testimony of the landlord, I find that he entered the unit without giving the tenant notice to enter. Even though the tenant had moved out, the landlord is still obligated to post a notice of entry on the door. In addition the landlord changed the locks on July 26, even though the tenancy officially ended on July 31.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the tenant a minimal award of \$160.00 which is the approximate prorated rent for the period that the locks were changed. Since the tenant has not proven the majority of her claim, she must bear the cost of filing her application.

Pursuant to section 67, I am issuing a formal order for payment in the amount of \$160.00. This order may be 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*.

Dated: November 01, 2011.

---

Residential Tenancy Branch