

## **DECISION**

Dispute Codes      MNDC FF O

### Introduction

This hearing dealt with the tenant's application for monetary compensation. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The rental unit is a manufactured home. The tenancy began on November 1, 2014, with monthly rent of \$1,200.00 due in advance on the first day of each month. At the beginning of the tenancy, the landlord and the tenant carried out a move-in inspection and completed the condition inspection report.

In late May or early June 2015 the tenant informed the landlord that her water was not heating up. A plumber attended and fixed the hot water tank, but within a short time it stopped working again. The landlord had a new hot water tank installed on June 15, 2015.

On July 17, 2015 the landlord hired a restoration company to check out the rental unit floor, and they reported that when the old hot water tank was removed the plumber did not hook up the water properly, and water was leaking all through the underbelly of the trailer. Plywood was put down over top of the damaged kitchen floor, and several heaters were used to attempt to dry the floor.

On or about June 26, 2015, the landlord served the tenant with a two month notice to end tenancy for landlord's use. The notice indicated that the reason for ending the

tenancy was that the landlord intended to renovate the rental unit in a manner that required the rental unit to be vacant. The effective date of the notice was August 31, 2015.

On July 19, 2015 the tenant and the landlord's agent did a move-out inspection and completed the condition inspection report. The landlord regained possession of the rental unit on that date.

### *Tenant's Evidence*

The tenant calculated that 40 percent of her rental unit was unusable for 62 days, because of the water and flooring issues, and she has claimed \$975.00 in compensation for this loss of use. The tenant also stated that the rental unit was unbearably hot and damp because of the leak.

The tenant stated that the utilities were much higher in June and July, and she has claimed \$227.93 representing half of the utilities for those months.

The tenant stated that on July 13, 2015 she informed the landlord by text, email and registered mail that she was giving her 10-day notice to vacate, as per section 50 of the Act, and she has claimed return of \$348.38 in prorated rent for July 23 to 31, 2015.

The tenant stated that the notice to end tenancy for landlord's use was not valid because the landlord checked off two boxes indicating two different reasons for ending the tenancy. The tenant submitted evidence showing that on August 26, 2015 the landlord offered to re-rent the unit to the tenant for September 1, 2015. The tenant has claimed \$952.95 for costs related to moving out of the rental unit. The tenant has also claimed \$2,400.00 for an unspecified reason.

Additionally, the tenant claimed for her photo development and registered mail costs.

In support of her claim the tenant submitted copies of text messages between the tenant and the landlord or the landlord's agents. These messages show that on June 8, 2015 the tenant informed the landlord that the kitchen floor was "weak" in several places, and on June 9, 2015 the landlord replied that she would have to have her agent attend the property and check things out. The text messages also show that on July 13, 2015 the tenant informed the landlord of her notice to vacate, and on July 14, 2015 the landlord replied that electronic notice was not acceptable. The tenant indicated that she sent the registered mail to the address on the tenancy agreement, and the landlord replied that the tenant ought to have sent it to the address on the notice to end tenancy.

The tenant also submitted several photographs showing extremely warped, uneven flooring.

### *Landlord's Response*

In the hearing the landlord stated that she did not know anything about the condition of the kitchen floor until June 15, 2015. The landlord stated that on that date the restoration company told her that the flooring of the entire home would have to be ripped out, including kitchen cabinets and sinks. The landlord stated that this is why she gave the tenant the notice to end tenancy.

The landlord stated that her insurance company thought that the unit would be ready for September 1, 2015, which is why she offered it to the tenant to re-rent. The landlord stated that it turned out not to be done until mid-October 2015.

The landlord stated that she received the tenant's written notice to vacate on July 20, 2015, because the tenant had first sent the notice to the wrong address. The landlord stated that because of that she took the tenant's date to vacate as July 30, 2015, and she reimbursed the tenant \$38.70 for July 31, 2015.

### Analysis

I make no finding regarding the validity of the notice to end tenancy for landlord's use. The tenant chose to move out rather than pursue an application to dispute the notice. For this reason, I find that the tenant is not entitled to costs related to moving out of the rental unit.

The tenant did not provide sufficient evidence to show that the water issues resulted in loss of 40 of her use of the rental unit; nor did she provide sufficient evidence to show that her utilities were double the cost because of the water and floor issues. I therefore dismiss these portions of the tenant's application.

However, I am satisfied that the tenant lost a significant portion of use of the rental unit when the floor problems developed. I find, based on the tenant's text dated June 8, 2015, that the landlord was notified of the problem on that date, and I calculate that the tenant is entitled to a 40 percent rent reduction from June 8, 2015 to July 24, 2015, the last day the tenant was responsible for rent. The compensation for loss of use totals **\$712.08**, calculated as \$15.48 (40 percent of daily rent of \$38.70) for 46 days.

As established by the landlord's text message, she was aware by July 14, 2015 that the tenant was giving notice to vacate. The landlord and the tenant very frequently communicated by text message, and I find that in this case it is reasonable to accept July 14, 2015 as the date that the landlord was given the 10-day notice to vacate. The tenant, therefore, is entitled to reimbursement of rent from July 25, 2015 to July 30, 2015, in the amount of **\$193.50**. The landlord has already compensated the tenant for July 31, 2015.

It was not clear from the tenant's evidence why she applied for additional compensation of \$2,400.00, and I therefore dismiss that portion of her application.

Aside from the filing fee, which I address below, each party must bear their costs associated with the dispute resolution process. Therefore, the tenant is not entitled to compensation for her photo development and mailing costs.

As the tenant's application is partially successful, she is entitled to recovery of her **\$100.00** filing fee.

### Conclusion

The tenant's application is partially successful. The unsuccessful portions of the tenant's claim are dismissed without leave to reapply.

I grant the tenant an order under section 67 for the balance due of **\$1,005.58**. 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 25, 2016

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Residential Tenancy Branch