

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MND, MNDC, MNR, MNSD, FF

## Introduction

This hearing dealt with an application by the landlords for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

At the time appointed for the hearing to begin, the landlords were in attendance and the tenant was not. The landlords both gave solemn affirmations at the outset of the hearing that their evidence would be truthful. The tenant joined the hearing approximately 7 minutes late at a point when the landlords had almost completed their testimony. Due to an oversight, the tenant was not asked to affirm that her testimony would be truthful prior to her giving that testimony. After all the testimony from both parties had been offered, the landlord R.T. advised that the tenant had not been asked to make an affirmation. I apologized for the oversight and asked the tenant if her testimony would have changed at all had she given an affirmation to tell the truth prior to her testimony having been given. The tenant confirmed that her testimony had been truthful. R.T. insisted that this confirmation was insufficient at which time I advised that we could ask the tenant to give a solemn affirmation and repeat her testimony. R.T. stated that she did not wish this to take place and indicated that she was still not satisfied. I concluded the hearing as I was satisfied that the tenant's retroactive confirmation that her testimony was truthful had the same effect as her having given that testimony under oath and I am confident that there has been no procedural unfairness. I note that there is nothing in the Act or Rules of Procedure requiring parties to swear or affirm to tell the truth.

## Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

## Background and Evidence

The parties agreed that the tenancy began on February 1, 2009 and was set to run for a fixed term until August 1, 2009. Rent was set at \$1,800.00 per month and the tenant paid a \$900.00 security deposit.

The parties further agreed that a guest of the tenant broke windows in the rental unit which had to be replaced at a cost of \$190.26.

The tenant testified that in early June, she verbally advised the landlords that she could not afford to stay in the rental unit. The tenant paid \$900.00 in rent for the month of June and testified that the landlords agreed that they would keep the security deposit to cover the remainder of the rent. On June 29 the tenant was served with a 10-day notice to end tenancy for unpaid rent. The tenant testified that she moved out of the unit at the end of June.

The landlords denied having agreed to accept the tenant's verbal comments as notice that she was ending the tenancy and further denied having agreed to apply the security deposit to rent for the month of June. The landlords testified that when the tenant told them that she could no longer afford to live in the unit, they began showing the unit to prospective renters as the fixed term tenancy would be expiring on August 1. The landlords found new tenants whose tenancy began on August 15. The landlords testified that when they returned from a camping trip in July 5 they found a voicemail message from the tenant advising them that she had vacated the unit.

The landlords seek to recover the cost of repairing the windows, \$900.00 in unpaid rent for June and \$1,800.00 in unpaid rent for July as well as the \$50.00 filing fee paid to bring this application.

### Analysis

The parties agree that the tenant did not pay \$900.00 of her rent for the month of June and that the tenant's guest broke windows in the unit. The tenant is responsible for the actions of her guests and must be held liable for any damage caused by a guest. I award the landlord \$900.00 for unpaid rent for June and \$190.26 as the cost of repairing the windows.

I find that the tenant was under a contractual obligation to pay rent for the rental unit until August 1, 2009. The tenant did not have a legal right to end her tenancy prior to the end of the fixed term and even if she had that right, verbal notice is not effective to end a tenancy. I find that the tenant has not proven on the balance of probabilities that the landlords agreed to release her from the terms of the tenancy agreement as the landlords having been aware of her inability to afford the unit is not equivalent to the landlords agreeing to release her from her obligations under the fixed term. I accept that under the circumstances the landlord were unable to rent the unit for July. I find that the landlords are entitled to recover \$1,800.00 in lost income for July and I award the landlords that sum.

The landlords are awarded a total of \$2,940.26 which represents \$900.00 in unpaid rent for June, \$1,800.00 in lost income for July, \$190.26 for window repairs and the \$50.00 filing fee. Although the landlords applied for an award of \$3,600.00, they added the \$900.00 security deposit to their claim. As the landlords already hold the security deposit, this sum must be credited to the tenants and deducted from the award, which leaves a balance of \$2,040.26. Accordingly I grant the landlords a monetary order under section 67 for \$2,040.26. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlords are granted a monetary order for \$2,040.26.

Dated November 18, 2009.