

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The Landlord filed for a monetary order for compensation under the Act or tenancy agreement, and to keep the security deposit. The Tenants filed for a monetary order for compensation under the Act or tenancy agreement and for the Landlord to return the security deposit. Both parties claimed to recover their filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Is the Landlord entitled to the monetary claims made?

Are the Tenants entitled to the monetary claims made?

### Background and Evidence

The parties entered into a written, six month term tenancy agreement to run from February 1, 2009. The monthly rent was agreed as \$1,995.00 and a security deposit of \$1,000.00 was paid to the Landlord by the Tenants.

The Landlord was represented by a realtor who acted as his Agent at the relevant times in this matter.

The tenancy agreement was dated December 8, 2008, and the Landlord used a simple one page, self drafted tenancy agreement. Initially the Landlord wanted a one year term agreement, however, the Agent for the Landlord and the Tenants negotiated and agreed on a six month term. There is no date when the agreement was signed, neither did it have the statutory required provision that at the end of the term the Tenants had to vacate. Therefore, under the Act this agreement would have converted to a month to month tenancy on August 1, 2009, following the end of the term on July 31.

Around the middle of May 2009, the Landlord gave the Tenants a handwritten letter informing them they had two months to move out of the rental unit and were to vacate on August 1, 2009. The letter did not explain why the Landlord wanted the tenancy to end. During the hearing, the Landlord's documentary evidence and testimony was that he wanted to end the tenancy in order to sell the rental unit.

On May 15, 2009, the Tenants wrote to the Landlord informing him they had understood the tenancy would continue as a month to month tenancy following the six month term. They explained the inconvenience and cost of moving so soon after the tenancy began. They also informed the Landlord that the letter was not a valid or legal notice as required under the Act. They explained that they did not accept the letter as notice and would not be taking any steps to vacate the unit until served with the proper form under the Act.

The Landlord then served them with the requisite form under the Act, however, the Landlord again did not indicate his reasons on the form for ending the tenancy. Shortly after this the Tenants had become aware the intent of the Landlord was to sell the property.

The Tenants filed an Application for Dispute Resolution on or about May 22, 2009, requesting that the two month Notice to End Tenancy be cancelled, as the Landlord had not given a reason to end the tenancy as required in the form.

Towards the end of May 2009, the Landlord's Agent began posting notices on the door of the rental unit informing the Tenants she would be showing the rental unit to prospective buyers, as allowed under the Act. However, the Agent was unaware that under the Act a notice posted on the door is not deemed served until three days later.

According to the evidence of the Tenants, the Agent for the Landlord entered the rental unit on 12 occasions between May 17 and June 19, 2009. There were nine showings in the 13 days between June 2 and June 14, 2009.

The Tenants became upset with the frequent showings and determined they would simply accept the Landlord's two month Notice to End Tenancy. On June 23, 2009, the Tenants wrote the Landlord and informed him they would be moving out under the two month Notice to End Tenancy, and the Tenants then cancelled the hearing they had filed for. They explained to the Landlord they would be withholding the last month of rent for July 2009, pursuant to the provisions of the Act and of the Notice to End Tenancy. The Tenants also provided the Landlord with their forwarding address and requested a scheduling of the move out condition inspection report.

The Landlord filed his claim, alleging the Tenants should not be entitled to July as free rent, and asking for one month of mortgage payment, as they cancelled the hearing they said they would have. He claims that this cost him an extra mortgage payment. He seeks \$4,500.00 (\$2,000.00 for one month of rent and \$2,500.00 for a mortgage payment) in his claim and to keep the security deposit.

The Tenants filed their claim requesting the return of the security deposit and monetary compensation for loss of quiet enjoyment in the amount of \$1,497.00 (\$497.00 for loss of quiet enjoyment and \$1,000.00 as their security deposit).

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord's claim is dismissed as I find there is no merit to the claims, and there is insufficient evidence to show the Tenants breached the Act or tenancy agreement.

I find that the Landlord has breached several portions of the Act and is not entitled to any monetary compensation, or to keep the security deposit of the Tenants.

The Landlord breached the Act by trying to end the tenancy, initially without providing the required form, and then by not providing reasons to end the tenancy in the required form. The Tenants had a legal right to cancel their own Application for Dispute Resolution in June of 2009, and this does not entitle the Landlord to compensation.

Furthermore, the Tenants were entitled to not pay the July rent under the two month Notice to End Tenancy issued by the Landlord, pursuant to section 51 of the Act. They gave proper notice to end the tenancy and in fact, I find they acted in accordance with the legislation throughout this matter.

I find that the Landlord breached the Act in regard to accessing the rental unit, when his Agent repeatedly entered the rental unit without giving the proper notice to enter at the correct time. This caused the Tenants a loss of quiet enjoyment of the rental unit. I allow them the sum of \$500.00 for this, as it reflects half of the rent for the time period they lost quiet enjoyment.

I find the Landlord and his Agent had insufficient evidence to prove their allegation that the Tenants interfered with the showing of the rental unit to prospective buyers.

I find that the Tenants have established a total monetary claim of **\$1,550.00** comprised of \$500.00 for loss of quiet enjoyment, \$1,000.00 for the return of their security deposit and the \$50.00 fee paid by the Tenants for this application.

I grant the Tenants an order under section 67 for the balance due of \$1,550.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I also caution the Landlord that the Tenants would have a right to file an Application for double the security deposit if the Landlord does not repay them within 15 days of the service of this Decision and Order.

Lastly, as neither the Landlord nor his Agent appear to have a working knowledge of the Act or regulations pertaining to residential tenancies, I enclose Guidebook to the legislation for their information.

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: December 17, 2009.

---

Dispute Resolution Officer