# DECISION

**Dispute Codes** (MNR), MNDC, FF
MNDC, MNSD, FF, O

## Introduction

This matter dealt with an application by the Landlords to recover the cost of an electric fireplace removed by the Tenant and the filing fee for this proceeding. The Tenant applied for compensation for damage or loss under the Act or tenancy agreement and to recover her security deposit as well as the filing fee for this proceeding.

At the beginning of the hearing, the Tenant claimed that the Landlords had served her late with the Landlords' evidence package. The Tenant admitted that she did not need an adjournment to respond to this evidence and agreed to continue with the hearing as scheduled. During the course of the hearing it was apparent that the Landlords had not added a claim for unpaid rent to her application because they were under the mistaken belief that they had an agreement with the Tenant to keep the security deposit to offset unpaid rent. As the Tenant did not dispute that rent was unpaid, I permitted an amendment to the Landlords' application to include a claim for unpaid rent.

## Issues(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of her security deposit?

## Background and Evidence

This tenancy started on September 1, 2009 as a 3 month fixed term tenancy and continued thereafter on a month to month basis. Rent was $1,750.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $875.00 at the beginning of the tenancy.

The Landlords' Claim:

The Landlord said that she agreed to sell an electric fireplace to the Tenant at the end of the tenancy. The Landlord said the Tenant took the fireplace when she moved out but did not pay her for it. The Landlord also claimed that the Tenant did not pay rent for January 1 – 14, 2010. The Tenant did not dispute any of these matters.

The Tenant's Claim:

The Tenant said that prior to the tenancy, the Landlord advised her that she was taking the rental property off of the market and would be relisting it the following Spring. The Tenant said that this worked well for her because she was planning on purchasing a residence in the Spring. The Tenant claimed however, that in late October of 2009 the Landlord advised her that she had a purchaser for the property. One of the purchasers viewed the rental unit on or about October 20, 2009 with the Tenant present then returned approximately 2 days later to view it again with her spouse.

The Tenant admitted that she had discussions with the Landlord and purchasers about when she would move out but argued that these discussions about a move out date continued with the Landlord after October 20, 2009. The Tenant admitted that she witnessed the signature of the purchasers on the Agreement of Purchase and Sale dated October 20, 2009 but argued that she was unaware that the sale had completed until the Landlord advised her at the end of November 2009. The Tenant said she was also unaware of the date that the purchasers would take possession of the rental unit. In any event, the Tenant said that by early-December 2009 she agreed that she would move out on January 15, 2010 because the purchasers would not agree to her moving out at the end of January 2010.

The Tenant argued that although she was not given a 2 Month Notice to End Tenancy for Landlord's Use of Property, the Landlord was still required to give her compensation equal to one month's rent. The Tenant claimed that she would not have entered into the tenancy agreement if she had known that she would have to move before she purchased a residence. Consequently, the Tenant argued that she incurred additional moving expenses that she otherwise would not have had to incur. The Tenant also claimed that she could not find another residence to move into for January 15, 2010 and therefore had to pay for a full month's rent at her new residence. Consequently, the Tenant argued that the Landlord was also responsible for compensating her for ½ of her rent (of $900.00) for January 2010 at her new residence.

The Tenant further claimed that on 3 or 4 occasions during the tenancy, the Landlord entered the rental unit without notice to her and when no one was home. The Tenant said she arrived home on these occasions to find the Landlord there. The Tenant said in the last week of the tenancy, the Landlord allowed carpet cleaners and delivery persons into the rental unit without giving her notice. Consequently, the Tenant sought compensation for a breach of her right to quiet enjoyment.

The Tenant said she gave the Landlord her forwarding address in writing on January 14, 2010. The Tenant said she did not give the Landlord written authorization to keep the security deposit, however in her letter of that date, she proposed that the Landlord could offset rent for ½ of January 2010 from the security deposit and one month's compensation she believed the Landlord owed her.

The Landlord said that she was not actively looking for a buyer but that they approached her. The Landlord said that on October 20, 2009, the Tenant advised her and one of the purchasers that she would probably move at the end of December 2009

because she was involved in a court ordered sale which she anticipated would complete at that time. The Landlord said, however, in mid-December 2009 she received a call from the Tenant who seemed upset and advised her that the court ordered sale did not work out and she asked the Landlord to ask the purchasers if she could stay until the end of January 2010. The Landlord said she spoke to the purchasers but they wanted to take possession on January 15, 2010 as per the Agreement of Purchase and Sale.

The Landlord called one of the purchasers as a witness who claimed that on October 20, 2009 she discussed a move out date with the Tenant and Landlord and that the Tenant she said she was fine with a move out date of January 15, 2010 rather than January 31, 2010 because she planned to purchase a residence that she expected would complete at the end of 2009. Consequently, the Landlord argued she should not be responsible for compensating the Tenant for rent or moving expenses because she agreed to move out on January 15, 2010. The Landlord claimed that the Tenant said nothing about having any issues with moving out until 3 days prior to the end of the tenancy.

The Landlord denied entering the rental unit during the tenancy without notice to the Tenant although she admitted that she allowed carpet cleaners and stove delivery men into the rental unit on January 14, 2010 without advising the Tenant. The Landlord argued that the Tenant had already moved out by that date (which the Tenant admitted). The Landlord said she always gave the Tenant notice if someone was coming by to make repairs and recalled that this was done when a gutter, patio and window had to be repaired.

## Analysis

The Landlords' Claim:

As there is no dispute that rent is unpaid for the period January 1 – 14, 2010, I award the Landlords pro-rated rent in the amount of $790.32. As there is no dispute that the Tenant agreed to pay the Landlords $300.00 for an electric fireplace, I also award the Landlords $300.00 for that part of their claim. As the Landlords have been successful, I also find that they are entitled to recover the $50.00 filing fee for this proceeding. Consequently, I find that the Landlords have made out a claim for **$1,140.32**.

The Tenant's Claim:

Section 51 of the Act says that a Tenant who receives ***a notice to end tenancy under s. 49 of the Act*** is entitled to receive their last month's rent free or compensation equivalent to one month's rent. I find that the Tenant was not served with a Notice to End Tenancy under s. 49 of the Act and I find that there is no other basis under the Act or tenancy agreement for awarding her such compensation in the absence of a written Notice. Consequently, this part of the Tenant's application is dismissed without leave to reapply.

I also find that there are no grounds for the Tenant's claim for compensation for ½ a month's rent at her new residence and moving expenses because she was forced to move. Instead, I find that the Tenant agreed as early as October 20, 2009 to a move out date of January 15, 2010 (if the Landlord's sale completed) without relying on a 2 Month Notice from the Landlord because she believed her real estate deal would be accepted and completed by that time. I make this finding in part because I find that the weight of the evidence does not support the Tenant's argument that she was unaware of the possession date (or expected move out date) until sometime in December 2009. The evidence of the Landlord and her witness was that on October 20, 2009, the Tenant agreed to a move out date of January 15, 2010 and that this date was inserted into the agreement of purchase and sale which the Tenant signed as a witness.

Furthermore, the Tenant initially claimed that she told the Landlord and purchasers on October 20, 2009 only that she was looking for a house. Later in her evidence, however, the Tenant admitted that she that had discussed a court ordered sale with the Landlord and purchasers but denied telling them that she had an accepted offer or a date that it would complete. I agree that the Tenant probably did not have an accepted offer as of October 20, 2009, however, I accept the Landlord's evidence (which the Tenant did not contradict) that the Tenant only discovered in mid-December 2009 that her offer to purchase had not been accepted. As a result, I find that it was only after the Tenant's deal fell through that she took issue with having to move out of the rental unit on January 15, 2010. In these circumstances, the Landlord cannot be held responsible for additional rent and moving expenses incurred by the Tenant and those parts of her claim are dismissed without leave to reapply.

I find that there is insufficient evidence to support the Tenant's claim for a loss of quiet enjoyment during the tenancy. On this point, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlord or her agents entered the rental unit without notice (or permission). However, the Landlord denied that this occurred (with the exception of the last day of the tenancy). Given the contradictory evidence of the Parties and in the absence of any corroborating evidence from the Tenant, I find that the Tenant has not provided sufficient evidence to show that her right to privacy was repeatedly violated by Landlord as she alleged. Although there is sufficient evidence that the Landlord and her agents entered the rental unit on the last day of the tenancy after the Tenant had removed all of her belongings, I find that there was no reasonable expectation of privacy at this time as the Tenant admitted she had no further interest in returning to the rental unit once her belongings were removed. Consequently, I find this breach alone is not sufficient to warrant an award for compensation and as a result, this part of the Tenant's claim is dismissed without leave to reapply.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of

these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the Tenant gave the Landlords her forwarding address in writing on January 14, 2010 and that the tenancy ended that day. In her letter, the Tenant states as follows:

> " As it stands, you have my $850.00 damage deposit – I owe you $850.00 for Jan 01-15 for rent – and you owe me $1,750.00 for my last months rent (Landlord tenant act – being forced to move due to sale of home) I owe you $300.00 for the fireplace. If my calculations are correct – you owe me $1,450.00. I will expect this within the allotted 10 day standard time limit."

I find that this letter constitutes an offer from the Tenant rather than her written authorization for the Landlords to keep her security deposit. I also find that the Landlords did not return the Tenant's security deposit and did not make an application for dispute resolution to make a claim against the security deposit. Consequently, I find that the Landlords must return double the amount of the security deposit to the Tenant or $1,750.00. As the Tenant has only been partially successful in application, I find that she is entitled to recover one half of her filing fee for this proceeding or $50.00. As a result, I find that the Tenant has made out a total claim for $1,800.00.

I order pursuant to s. 72 of the Act that the Parties' monetary awards be set off and that the Tenant will receive a monetary order for the balance owing of $125.00

## Conclusion

A Monetary Order in the amount of **$125.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 24, 2010.

Dispute Resolution Officer