

## **DECISION**

Dispute Codes            MNR, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were set to the tenants by registered mail on January 25, 2010.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

Is the landlord entitled to recover unpaid rent?

### Background and Evidence

This tenancy started on March 22, 2006. This started as a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,000.00 per month and was due on the first of each month. The tenants paid \$500.00 as a security deposit which has been returned to them by the landlord. The tenants vacated the rental unit on January 30, 2010.

The landlord testifies that she served the tenants with a Two Month Notice to End Tenancy on October 29, 2009 as she intended to sell her property. The date given on this Notice to end the tenancy was January 01, 2010. The landlord claims the tenants asked to extend this time due to Christmas and their son's birthday. No further move out date was discussed and the landlord claims the tenants agreed that it would be revisited when she had sold the property.

The landlord testifies that on December 28, 2009 both Parties signed an agreement to cancel the Two Months Notice. The landlord claims that during the first week of January, 2010 the tenants verbally told her that they would be moving out at the end of January, 2010. The tenants paid rent for January by cheque which was posted to the landlord and received on or about January 12, 2010. However, this cheque was returned by the bank as there were insufficient funds available. The landlord states that she did not agree that the tenants could still have the January's rent for free as the Notice had been cancelled. The landlord seeks a Monetary Order for \$1,000.00 for January, 2010 rent and to recover her filing fee of \$50.00.

The landlord has provided a copy of the agreement to cancel the Two Months Notice and copies of the returned cheque.

The tenants dispute the landlords' testimony. The tenants agree that they did receive the Two Months Notice to End Tenancy. The tenants testify that on November 17, 2009 the tenants purchased a home and asked the landlord if they could move out on February 01, 2010. The tenants claim that the landlord agreed to extend the date of the Notice and told them they could still have the January's rent for free. The tenants agree that they signed the agreement to cancel the Two Month Notice to End Tenancy on December 28, 2009 but state they were still expecting the landlord to honour her word that they would have the month of January rent free and would not have agreed to cancel the Notice otherwise. The tenants state they would have moved out on January 01, 2010 if they thought the landlord would not keep her promise.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that one of the tenants and landlord both signed the agreement to cancel the Two Month Notice to End Tenancy. As this agreement was no longer in effect by December 29, 2009 the tenants would not be entitled to receive the equivalent of one month's rent in compensation for the two month notice as stated under section 51 of the Act.

The tenants argue that the landlord told them they could still have January, 2010 rent free. When a tenant's verbal testimony is contradicted by the landlord the burden of proof falls on the tenants to provide additional corroborating evidence to support their claim. In the absence of any corroborating evidence, I find that the tenants have not provided sufficient evidence to show

that this was a verbal agreement reached by both Parties. I further find that the tenants did give the landlord a cheque which was dated January 01, 2010 and marked as January's rent. If the tenants had entered into an agreement with the landlord prior to January, 2010 to receive January's rent in compensation and knew they would be vacating the rental unit at the end of January why would they then give the landlord a cheque for January's rent. Consequently I find the landlord has established her claim for unpaid rent for January, 2010 and is entitled to a Monetary Order to recover this amount from the tenants pursuant to section 67 of the Act.

As the landlord has been successful with her application I find she is also entitled to recover the \$50.00 filing fee from the tenants pursuant to section 72(1) of the Act.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,050.00. The order must be served on the respondents and is enforceable through the Provincial Court 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: April 22, 2010.

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Dispute Resolution Officer