



# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** AAT MND MNDC MNR MNSD RPP FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- A monetary order pursuant to Section 67, for rent owed, for costs to repair damage to the rental suite and for liquidated damages due to the tenant prematurely ending a fixed term tenancy;
- An order to retain all or part of the security deposit pursuant to Section 38.

The tenant applied for the following:

- An order to allow access to the rental unit and for the return of the tenant's personal belongings pursuant to Sections 70 and 65.
- A monetary order to recover costs of moving and rent paid for the period that the tenant did not have access to the rental suite, pursuant to Section 67.

Both parties applied for the recovery of the filing fee pursuant to Section 72.

The tenant and landlord entered into a fixed term lease of one year and the tenant ended the tenancy prior to the end date as stated on the tenancy agreement.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### **Issues to be decided: Landlord's Application**

- Is the landlord entitled to monetary order to recover the loss incurred as a result of the termination of the tenancy on the part of the tenant prior to the end date, as stipulated in the tenancy agreement?
- Has the landlord established entitlement to compensation for repairs to restore the suite to a satisfactory condition?
- Is the landlord entitled to retain the security deposit in satisfaction of the claim?

#### **Issues to be decided: Tenant's Application**

- Has the tenant proven entitlement to be reimbursed for the cost of moving and other related costs?
- Is the tenant entitled to an order to be allowed access to the rental unit and for the return of the tenant's personal property?

#### **Background and Evidence**

Based on the testimony of both parties, the background is as follows:

The tenancy started on September 25, 2008 for a fixed term of one year ending on August 31, 2009. The monthly rent was set at \$3200.00 payable in advance on the first of each month. The tenant paid a security deposit in the amount of \$1600.00 on September 25, 2008. The tenant served the landlord with a 60 day notice to end tenancy with an effective date of January 31, 2009. Due to a break in, the locks to the rental unit were changed and the landlord withheld the new keys from the tenant for the period of January 13, 2009 to January 20, 2009. During this period, the tenant was denied access to the rental unit and the landlord offered to give the new set of keys to the tenant on condition that the tenant committed to a monetary amount of compensation for breaking the lease. On January 20, 2009 the tenant was granted access to the rental unit by the landlord. The tenant and landlord came to an agreement regarding rent for January 2009 and the tenant paid total rent by utilizing the security deposit towards the rent.

The tenant is applying for a total of \$3437.85 which includes costs that were incurred due to the inability of the tenant to access the rental suite. The landlord is applying for a monetary order in the amount of \$24,000 which includes the loss of income from the broken lease.

During the hearing the parties respectfully afforded each other an opportunity to set out their differing perspectives on events leading up to the dispute.

### **Analysis**

Pursuant to section 63 of the *Act*, during the hearing the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. Specifically, the parties agreed as follows that:

- The landlord will retain the full amount of the tenant's security deposit towards rent for January 2009;
- Pursuant to a monetary order in favour of the landlord the tenant will pay to the landlord FORTHWITH the amount of \$8575.00 on or before January 30, 2009.
- The cleaning of the rental unit will be completed by the landlord starting on this date, January 28, 2009.
- The tenant will permit the landlord access to the rental unit starting January 28, 2009.
- The landlord will place the articles of clothing that the tenant left behind, in a box and release it into the custody of the concierge, for pick up by the tenant.
- The parties will exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive end to the landlord – tenant relationship.

The parties agree that the above particulars comprise full and final settlement of all aspects of the dispute for both parties and no monies remain payable by either party to the other.

**Conclusion**

Pursuant to the above agreement, I hereby issue a monetary order in favour of the landlord effective on or before **Friday, January 30, 2009** in the amount of **\$8575.00**.

Both parties must bear the cost of filing their own application.

Dated: January 28, 2009.

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Dispute Resolution Officer