

Dispute Resolution Services

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

DECISION

Dispute Codes:

MND, MNSD, MNDC,FF, O

Introduction

This hearing dealt with a cross-application by the Landlord and the Tenant.

The application by the landlord is for a monetary order for damages to the rental unit, for loss of revenue due to alleged improper notice by the tenant, and an order to retain the security deposit in partial satisfaction of the monetary claim. The application is inclusive of recovery of the filing fee.

The application by the Tenant is for a monetary order for compensation under Sec. 38 of the Residential Tenancy Act (RTA) for double the amount of the security deposit, and for recovery of the filing fee associated with making this application. The tenant is also applying for relief under Sec. 26 of the RTA for all receipts for the rent paid during the period of the tenancy. In this latter regard, the landlord stated at the outset of the hearing that she would comply with this request for the receipts and forward same to the tenant forthwith.

The tenancy ended on October 31, 2008 when the tenant vacated the rental unit

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

Both parties provided testimony under solemn affirmation.

The tenancy began on May 15, 2005. Rent in the amount of \$950 was last payable in advance on the first day of each month. At the outset of the tenancy the rent was \$900 and the landlord collected a security deposit from the tenant in the amount of \$450. With the knowledge that the tenant would be moving into the rental unit with a dog, the landlord specifically declined to collect a pet damage deposit.

There was no proper move in inspection done and recorded, and no proper move out inspection done and recorded.

According to the landlord, the tenant called on November 1, 2008 to advise the landlord that she had moved out of the basement rental unit the previous day, October 31, 2008. The landlord described this advice from the tenant as completely surprising, and without the benefit of proper notice to her. The landlord's claim is for one (1) month's rent of lost rental revenue for the month of November in the amount of **\$950**. The landlord also is claiming an additional month's lost revenue of **\$950** for December due to the need to perform repairs and upgrades to the rental unit. Specifically, the landlord testified that the repairs and upgrades were partly due to the tenancy and in part to her own discretion to ready the rental unit for a family member's occupancy. In essence the work required amounted to replacement of all the flooring in the unit, for which the landlord claims the tenant is only being held responsible for replacement of the flooring in the bedroom in the revised amount of **\$300**. The landlord is also claiming personal labour for general cleaning in the amount of **\$75**, as well as **\$110** for painting and patching of walls which the landlord claims are not within acceptable wear and tear of the tenancy. The landlord's total claim amounts to **\$2285**.

The landlord further testified that the first time the tenant advised her in writing of her forwarding address and request for the return of the security deposit was in a letter submitted as evidence dated November 11, 2008. The landlord filed for dispute resolution on November 25, 2008, in part, to keep all or part of the security deposit.

According to the tenant, the landlord was personally given a letter dated October 2, 2008 advising the landlord that she would be vacating the rental unit October 31, 2008. The letter advanced as evidence in this hearing by the tenant appears to aptly communicate that the tenant is moving out and contains the required elements of a tenant's notice to vacate, except for the time stipulations embedded in sec 45 (1)(a)(b). The tenant has provided evidence (Tenant's file: item RSE-8-Landlord's Inspection and

Thank You) that on moving out the landlord seemed pleased with the condition of the rental unit and there has never been an inspection of the unit's condition which subsequently resulted in a demand for retention of the security deposit for damages, or repairs. The tenant additionally provided testimony and advanced evidence that she supplied the landlord with written notice dated November 1, 2008 of her forwarding address, along with, " the house key and shed key in the mailbox". The landlord denies receiving the written notice; however, both parties agree the tenant then sent a letter dated November 11, 2008 to the landlord requesting the return of the security deposit and providing a forwarding address to which it should be sent. This letter mentions both elements of section 38 (1) and refers that the security deposit should therefore be returned by November 15, 2008. The tenant is claiming compensation of double the security deposit of **\$900**, plus interest on the primary amount of \$450. Together with recovery of the \$50 filing fee, the tenant's total claim amounts to **\$914.80**

Analysis

Section 45 (1)(a)(b) of the Residential Tenancy Act states as follows in respect to a Tenant's notice to end a tenancy:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenant did not provide sufficient notice to end the tenancy to the landlord, which should have been provided no later than September 30, 2008. Therefore, I find the landlord is entitled to rent for the month of November in the amount of **\$950**. The landlord is responsible to mitigate revenue loss and is not entitled to additional compensation for any time following.

In the absence of move-in and move-out inspections at the start and end of the tenancy, and on reflection of the evidence before me, I prefer the tenant's testimony and

evidence that before and after moving out the landlord communicated that the rental unit was in acceptable and expected condition. Given the history and three (3) year period of the tenancy as described by both the landlord and tenant, I decline to award the landlord costs for flooring for the bedroom, cleaning by the landlord, and for some painting and some patching within the unit.

I find the landlord has established a claim, inclusive of recovery of the filing fee of \$50, in the total of **\$1000**.

The evidence before me is that the tenant provided the landlord with her forwarding address in writing on November 01, 2008 and I accept this evidence as fact.

Section 38 of the Residential Tenancy Act is as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$450** and was obligated under section 38 to return this amount together with \$14.80 in accrued interest. The amount that is doubled is only the \$450 base amount of the deposit, before interest.

I find that the tenant has established a claim for **\$914.80**. The tenant is equally entitled to recovery of the \$50 filing fee. I find the tenant has established an inclusive claim in the total of **\$964.80**

Conclusion

The landlord stated at the outset of the hearing that she would comply with the tenant's request for all rent receipts for cash payment of rent since May 2005 and forward same to the tenant forthwith, and I so order that the landlord comply with this request.

I order that the landlord may retain the security deposit and interest of **\$464.80** in partial satisfaction of her claim of \$1000 due from the tenant.

I then order the landlord to deduct the balance of \$535.20, due from the tenant, from the \$964.80 which the landlord owes the tenant.

I grant the tenant an order under section 67 for the balance of her claim in the amount of **\$429.60**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 15, 2009