

DECISION

Dispute Codes: MNR, MNSD, MNDC, FF

This hearing dealt with a cross applications by the parties. The landlord applied for a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for compensation for damages under the tenancy agreement and the return of her security deposit.

Issue #1 – Whether the landlord is entitled to a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim?

On August 16, 2008, the landlord collected from the tenant a security deposit in the amount of \$475.00. A monthly rent of \$950.00 was payable on the first day of each month. On November 30, the tenant gave written notice to the landlord that she would be moving out within a week. The tenant did not pay for the December rent. On December 2, the landlord served the tenant with a notice to end tenancy for unpaid rent. On December 3, the tenant moved out of the rental unit.

Based on the above, I find that the landlord has established a claim for \$950.00 in unpaid rent for December. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$477.69 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$522.31. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Accordingly, I dismiss the tenant's application for return of her security deposit.

Issue #2 – Whether the tenant is entitled to compensation for damages under the tenancy agreement?

The tenant contended that during her tenancy, the landlord had entered her unit without notice on several occasions. Specifically, on October 5, the outside light (which was only accessible from the tenant's unit) was turned off when the tenant came home. When the tenant moved in on September 30, the landlord gave notice to enter her unit on or about October 6 to repaint her kitchen. On or about October 5, the landlord's wife, DT, offered to move the tenant's boxes inside the unit in preparation for the painting. The tenant said that DT would not have known about the boxes inside the unit unless she had been inside. There were 4 other occasions in October whereas the tenant's garbage was taken out, the outside light was turned on when tenant came home late, the screen door was left open and the television cable was hooked up – all without notice to the tenant. Furthermore, on November 12, 23 and 24, the landlord entered her unit to repair the furnace and breaker without notice to the tenant.

In reply to the tenant's complaints, the landlord gave the following explanations. The outside light was in fact a sensor light. At one point, the sensor light did not work and the landlord replaced it. The landlord did not remember the exact date of the replacement but said that it was during the tenant's tenancy. The landlord hooked up the tenant's television cable when his wife was repainting the kitchen and this entry was with notice to the tenant. After the landlord's wife completed the painting, she took the tenant's garbage out along with her painting materials. With respect to the entry into the tenant's unit to repair the furnace and breaker, the landlord said that he entered the tenant's unit due to the emergency nature of these repairs.

I have accepted the landlord's undisputed explanations with respect to 1) the outside sensor light turning on and off by itself; 2) the landlord hooking up the tenant's television cable during an entry with notice given to the tenant; and 3) the landlord's wife took out the garbage for the tenant along with her painting materials. With respect to the landlord's explanation for entry into the tenant's

unit without notice to repair the furnace and breaker, I find that a broken central heating system and a malfunctioning electrical system to be emergencies; and Section 29 of the *Residential Tenancy Act* states that a landlord may enter the rental unit without proper notice if an emergency exists and the entry is necessary to protect life or property.

The landlord's wife explained that she found out about the boxes inside the tenant's unit during one of her painting days. The tenant maintained that the landlord's wife had approached her about the boxes before the painting started. I have considered that the disputed time frame as to when the landlord became aware of the boxes inside the tenant's unit. I have also considered that the landlord has not offered any explanation as to why the tenant's screen door was left opened. However, I find these interferences to be neither significant nor persistent over an extended period of time.

For the above reasons, I find the tenant has not proven sufficient grounds to warrant compensation for damages under the tenancy agreement.

I therefore dismiss the tenant's application.

Dated February 03, 2009.