

Dispute Resolution Services

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

DECISION

Dispute Codes:

MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenant

The tenant seeks

1. a monetary order for double the security deposit in the amount of \$1000.
2. a monetary order to recover the filing fee for this application in amount of \$50.

The landlord seeks

1. a monetary order for damage / compensation for loss,
2. a monetary order for unpaid rent,
3. a monetary order for loss of rental revenue,
4. an order to be allowed and to retain the security deposit
5. a monetary order to recover the filing fee for this application in amount of \$100.

The total of the landlord's claim is as follows:

Claim to the security deposit	500.00
Filing fee	100.00
Registered mail charges	45.00
Damage to rental property	8816.35
Unpaid rent	183.29
Loss of rental income	3000.00
Total claim on application	12,644.64

The landlord was represented by an agent for the landlord, and the tenant appeared in his own behalf and each was given opportunity to participate fully in this hearing. The parties provided testimony and evidence under solemn affirmation.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit claimed, along with the filing fee?

Has the landlord established, on a balance of probabilities, that they have suffered a loss due to the tenant's neglect or failure to comply with the Act, regulation or tenancy agreement?

If so established, did the landlord take reasonable steps to mitigate the loss?

Is the landlord entitled to the monetary amount claimed?

The burden of proving loss and damage rests on the respective claimants, and, there is an obligation upon the claimants to act reasonably to mitigate or minimize the loss.

Background and Evidence

The landlord submitted a tenancy agreement indicating the tenancy began in mid-June 2008, rent was \$1000 per month and a security deposit of \$500 was paid at the outset of the tenancy. The tenancy ended on October 31, 2008

As to the tenant's claim:

The tenant's application seeks return of double the root security deposit of \$500, with interest on the root amount. The tenant submitted that on November 2, 2008 he handed the landlord a written notice requesting the security deposit be returned, along with his forwarding address. In support of his claim he advanced a letter from his mother. This letter states that she attended with the tenant on November 02, 2008 at the landlord's house and observed her son give the change of address to the landlord. The tenant's mother also provided solemnly affirmed testimony in the hearing that she indeed was present on November 02, 2008 when her son provided the landlord with his forwarding address and request for the security deposit. On November 19, 2008, the

tenant applied for dispute resolution, requesting double the security deposit as per section 38 of the Act.

The landlord denies the tenant came to his home on November 02, 2008, and claims that he received the forwarding address from the tenant, when he visited the landlord on November 14, 2008. In their submissions, the landlord acknowledges he did not file for dispute resolution until January 5, 2009, significantly after the 15 days the landlord was permitted to apply to retain the security deposit. As well, the landlord submitted as evidence, in their evidence package, a note dated October 31, 2008 from the second tenant (the wife of the then tenant couple) stating that she was leaving to the landlord the remainder of her property, and the damage deposit of \$500", "to regroup the damages my husband [the applicant tenant] has done to the property of [the property address]". The note was signed by this tenant (wife). The tenant couple are no longer together, and they each moved out of the rental unit within a week of one another. The applicant tenant acknowledges his wife was also a tenant, but disputes that she had the right to assign the security deposit to the landlord when she vacated the rental unit subsequent to his departure.

As to the landlord's application:

The landlord is claiming the tenant made unauthorized modifications in the rental unit during the 4 month tenancy, including extensive unauthorized electrical wiring, redirection of plumbing, replacement of flooring, replacement of light fixtures, and structural fixtures adhered to walls and ceilings, all in contravention of the tenancy agreement, which clearly stipulates that there is to be *no painting or remodelling without landlord's permission, and no construction or business permitted on premises*. The landlord is first to acknowledge there was no start of tenancy inspection, or report done and claims the tenant avoided doing an end of tenancy inspection with the landlord.

During the tenancy the landlord had become aware of extensive and unauthorized changes in the suite and, the landlord claims; he was concerned for the safety and the risks to his property. He submits as evidence a One (1) Month Notice to end Tenancy for cause issued October 2, 2008, which, in part stipulates the "*tenant has caused extraordinary damage to the unit/sit or property / park*". This Notice was disputed by the tenant, and a Dispute Resolution Officer heard the application on November 4, 2008. At the hearing the tenant confirmed they no longer were disputing the Notice as they had

moved out by October 31, 2008. Application was dismissed as abandoned. Once the tenants moved out the landlord was able to confirm his concerns that unauthorized work and structural changes had been made to the rental unit and he began to catalogue the damage done. The landlord has provided photographs of the damage and has provided 2 detailed estimates as to what it will cost to repair the electrical, plumbing and structural damages, to a standard of like-new.

The tenant's response to the landlord's submissions of damages is outright denial that he is responsible for any of the described damage or alterations, saying everything the landlord is claiming was already there when he moved in. He blames the landlord for not doing a start of tenancy inspection, and acknowledges he avoided an end of tenancy inspection for fear the landlord would," pin all this on me". The tenant offered each of his parents as witnesses to the condition the suite was in when he moved in. Both his parents were heard from individually and each provided testimony under oath. The result of their testimony is that they could not recall the condition of the suite at the outset of the tenancy, and in this regard did not help or hinder the tenant or the landlord.

The landlord's agent states without hesitation that the landlord is elderly and is unable to read or write well. In the short exchange I attempted with the landlord he seemed unsure of details. The agent offers that as a result of the landlord's condition, the tenants appear to have taken advantage of the landlord and short-changed him of rent over the tenancy in the amount of \$183. 29. The landlord provided a crude accounting to show how it may have come about. The tenant denies cheating the landlord of rent.

The landlord is claiming loss of rental income in the amount of \$3000 for the months following the tenant's departure. For various reasons the landlord has not been able to re-rent the suite, in part due to the work and the cost required to bring the suite to improvement. At the same time the landlord has not provided proof of any attempt to mitigate this loss.

Analysis

I find that the landlord's application to retain the deposit must fail as the landlord did not apply to retain it within 15 days of receiving the tenant's forwarding address.

However, In regards to the tenant's application and claim to double the security deposit I find the wife of the tenant couple, as co-tenant and as agent for the tenancy, had the authority to assign the security deposit to the landlord, and did so in her note to the landlord dated October 31, 2008

Section **38(4)** of the Act states:

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) **at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or**

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Therefore, any dispute as to the security deposit now rests between the tenants.

Under these circumstances I find I must **dismiss the tenant's claim** of the security deposit and for compensation under Section 38, and simply confirm the landlord's right to deposit's retention. I formally **dismiss the landlord's claim** to the security deposit in this application.

Without additional corroboration I find the landlord's claim for unpaid rent in the amount of **\$183.29** is not adequately supported, and I therefore dismiss this portion of the claim.

I find the landlord's claim in respect to damage by the tenant is supported in several ways. I place some credibility on the landlord's first attempt to evict the tenants in October 2008 with a One month notice to End for Cause, for *causing extraordinary damage to the unit*. This matter ended by the tenants moving out. I also place some weight on the note to the landlord from the tenant's wife, the other tenant, which states

and acknowledges that her husband caused damage to the property. On the preponderance of probabilities I find the tenant is responsible for damage to the rental unit and responsible to compensate the landlord, as a result

The landlord's repair estimates are to bring the suite to a standard of like new; which is in contrast to the unknown standard in which the suite was in at the outset of the tenancy, as there is no inspection report for guidance, and the landlord has not forwarded evidence to substantiate the condition of the suite at the outset of the tenancy. I do not find that either of the two all-inclusive estimates is a reasonable representation of the cost to make the remedial repairs claimed. The lowest at \$8816 has been selected for this application, and I find it may be technically justifiable, but it contains wide margins. I find this estimate to be too generous. There was discussion in the hearing that this rental unit is, to this date, not fully finished, and that its construction dates back to the early 1970's. In my reflection of all the submissions in respect to the damages, I am also aware that more often than not it is more costly to make repairs than to start from nothing. All factors considered, I grant the landlord a sum of **\$2975** in respect to the damages incurred by the tenant.

Under Section 7 of the Act the landlord is required to do what is reasonable to mitigate loss of revenue. This section reads as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the absence of any supporting evidence showing how the landlord has reasonably attempted to minimize loss in this regard I find the landlord has failed to prove this claim. Therefore this portion of the landlord's claim for \$3000 is dismissed.

The landlord cannot claim costs for postage. However, as the landlord has been partially successful in their application I will award the landlord **\$50** toward the filing fee for this application.

As the tenant was not successful in his application I must deny his request to recover the filing fee for their application.

As a result, the landlord's entitlement claim as to his claim on application is as follows:

Claim to the security deposit	previously assigned by tenant
Filing fee	50.00
Registered mail charges	0
Damage to rental property	2975.00
Unpaid rent	0
Loss of rental income	0
Total entitlement claim	\$3025.00

Conclusion

I grant the landlord an order under section 67 for the amount of **\$3025**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

dated March 06, 2009