

## **DECISION AND REASONS**

**Dispute Codes:** MNSD, MNR, FF

### **INTRODUCTION**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. A Monetary order for return of pet damage or security deposit pursuant to Section 38;
2. A monetary order for money owed or compensation for damage or loss; and
3. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties attended and gave evidence under oath. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **BACKGROUND AND EVIDENCE**

The tenant testified that she vacated the premises on January 19, 2009 and provided her forwarding address in writing to the landlord 15 days later for the purposes of returning her security deposit. The tenant testified that she does not have a copy of the letter in which she provided her forwarding address to the landlord but the landlord says he received the letter on January 21, 2009 in which the tenant provided her father's address for delivery. The tenant testified that the security deposit has not been returned by the landlord. The landlord agrees that the deposit has not been returned but questions why the tenant seeks \$600.00 when the deposit was only \$300.00. The landlord says he did not seek a pet deposit even though he did allow her to have a cat which he believed was trained. The landlord says the tenant left damages such that he expended \$800.00 to repaint the rental unit, \$45.00 to rent a carpet cleaner and \$30.00 to clean the drapes. The landlord also says that he paid \$141.75 to have a shower door replaced that the tenant had broken. The landlord provided receipts for these expenditures.

The tenant is claiming damages for of 2 months rent for illegal entry into the rental unit by the landlord. The tenant submitted a video surveillance tape she says is evidence of

the landlord's illegal entry while she occupied the rental unit. The landlord agrees he did enter the tenant's rental unit. The landlord testified that the rental unit is a basement suite in his home and he and his family occupy the upstairs portion of the home. He says the breakers for the entire home are located in the tenant's rental unit. If the breaker switch would trip he would have to go into the rental unit to reactivate the breaker. The landlord says the tenant was aware of this arrangement from the beginning and at no time did he enter her suite without her knowledge. Further, the landlord testified that if the tenant was concerned about him entering to reactivate the breaker, she never mentioned it to him or sought help from the authorities for these "illegal entries".

The tenant is claiming \$40.00 per month for the months of October to January 2009 because the landlord told her she could not longer use the laundry facilities which were a part of her original tenancy agreement. The landlord says the tenant was initially allowed to use the laundry facilities also used by the landlord but the landlord discovered that after the tenant used the dryer, it was full of cat hair and she did not clean the dryer. The landlord says he advised the tenant she could no longer do her laundry in the rental unit because his son was allergic to the cat hair. The landlord questioned why the tenant stayed on for a further 5 months without asking to reduce her rent for the loss of the laundry and decides to apply for recovery of laundry costs now.

## **FINDINGS**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

With respect to the landlord's testimony that he has incurred expenses resulting from this tenancy to repair and clean the rental unit, there is no application before me from the landlord and I am therefore unable to consider the landlord's claims. However, the landlord is entitled to make application for a monetary order for these costs.

With respect to the tenants claim for recovery for loss of use of the laundry, I find the use of the laundry was a term of her tenancy and the evidence of both parties is that the laundry facilities were denied her. I find \$40.00 per month a reasonable sum and award the tenant \$160.00 for October to January 2009 for loss of use of the laundry.

With respect to the tenant's claims for illegal entry, I find it reasonable and probable that a landlord would make arrangements with a tenant to enter a unit in the event of a breaker tripping when the breaker box for the entire rental building, in which the landlord also lives, was located in the tenant's rental unit. I therefore find that the tenant has failed in her burden of proving that the landlord made illegal entries into her rental unit and I dismiss the tenant's claims therefor.

Having been partially successful in this application, I find the tenant is also entitled recover the \$25.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

|  |                 |
|--|-----------------|
| Security Deposit paid on December 1, 2009  | \$300.00        |
| Double Security Deposit  | 300.00          |
| Interest on original amount paid from date security deposit paid to date of this order | 9.21            |
| Loss of Use of Laundry   | 160.00          |
| Partial filing fees  | 25.00           |
| <b>TOTAL MONETARY AWARD</b>  | <b>\$794.21</b> |

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.