

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for compensation resulting from the landlord ending the tenancy for landlord's use of the property, to recover interest owed on the security deposit, and to recover the filing fee for the tenant's application for dispute resolution.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 8, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on April 13, 2009 the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to a monetary claim for compensation owed by the landlord pursuant to Section 51 of the *Residential Tenancy Act*
- Whether the tenant is entitled to a monetary claim for interest owed on the tenant's security deposit pursuant to Section 38 of the *Residential Tenancy Act*
- Whether the tenant is entitled to recover the filing fee from the landlord for with application under Section 72 of the *Residential Tenancy Act*

### Background and Evidence

The tenancy began May 1, 2008, was a month to month tenancy which ended November 30, 2008, with rent of \$700.00 payable on the 5<sup>th</sup> of each month. The tenant paid \$700.00 for a security and pet deposit on May 1, 2008.

The tenant's witness testified that she was present during some of the tenant's conversations when the tenant was requesting one month compensation from the landlord because the landlord ended the tenancy. The witness stated that she assisted the tenant in completing the chronological list of events that the tenant entered into evidence and that there was one typing error on the first page, last paragraph which begins with "On February 29, 2009" and that this date should read February 20, 2009.

The tenant testified that she signed a tenancy agreement with the landlord but that the landlord never provided a copy of the agreement to the tenant. The tenant stated that she was allowed to have a pet so she did not know if the \$700.00 represented just a security deposit or payment towards a security and pet deposit.

The tenant testified that the landlord conducted a move-in inspection report and completed the form that he acquired from the Residential Tenancy Branch. The tenant stated that the landlord never gave her a copy of the move-in inspection report.

The tenant stated that the landlord did not conduct a move-out inspection report. The tenant testified that the landlord told the tenant on November 22, 2008, that everything was fine with the rental unit and the landlord gave the tenant \$700.00 as the refund of her security/pet deposit but that there was no interest included with the refund.

The tenant testified that on October 27, 2008 the landlord told her verbally that she had to vacate the rental unit by November 30, 2008 because his ex-girlfriend and child were moving into the rental unit. The tenant stated she complied with the verbal notice and vacated the rental unit by November 22, 2008.

The tenant advised that she approached the landlord on November 15, 2008 to advise him of his requirement to provide the tenant with one month compensation because the landlord was ending the tenancy. The tenant stated that the landlord was confused about his obligations, that he told the tenant she was wrong and that he did not have money to pay the tenant.

The tenant testified that she has continued to contact the landlord to request the compensation required under the *Act* and on February 21, 2009 she picked up an envelope with \$200.00 cash as payment from the landlord. The tenant is seeking a monetary claim for the balance of the required tenant's compensation of \$500.00 and any interest owed on the return of her security deposit.

### Analysis

Given the evidence before me, in the absence of any evidence from the landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the tenant and corroborated by her witness.

In regards to a tenant's right to claim damages from the landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the tenant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

The tenant has provided verbal testimony which states that the landlord did not provide the tenant with a copy of the tenancy agreement which I find contravenes section 13(3) of the *Residential Tenancy Act* which stipulates that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

The tenant stated that while the landlord did conduct a move-in inspection report the landlord did not provide a copy of the report to the tenant and the landlord did not conduct a move-out inspection. I find that the landlord has contravened sections 23(5) and 35 of the *Residential Tenancy Act*.

Although the tenant received a full refund of her security/pet deposit in the amount of \$700.00 I find that the landlord has contravened Section 38 of the *Act* when he failed to include \$5.65 of interest when refunding the tenant her security deposit. I find that the tenant has met the test of proof as listed above and find in favor of her claim for interest of \$5.65.

Based on the documentary evidence and verbal testimony I find that the landlord ended the tenancy pursuant to Section 49(3) of the *Act* which allows a landlord to end a tenancy if the landlord or close family member intends in good faith to occupy the rental unit. I find that the landlord contravened section 49(2)(a) which stipulates that the landlord must give notice to end tenancy effective on a date that must not be earlier

than 2 months after the date the tenant receives the notice and section 49(7) which stipulates that a notice to end tenancy must comply with section 52 of the Act which stipulates the form and content of notice to end tenancy.

Section 51 of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Based on the foregoing I find in favour of the tenant's monetary claim for compensation equivalent to one month's notice, less the \$200.00 payment already received by the tenant from the landlord.

**Monetary Order** – I find that the tenant is entitled to a monetary claim and that the tenant is successful in her claim so is entitled to recover the filing fee from the landlord as follows:

|   |                 |
|---|-----------------|
| Interest on the security and pet deposit  | \$5.65          |
| 1 month compensation for landlord ending tenancy \$700.00 less \$200.00 payment | 500.00          |
| Recovery of the filing fee  | 50.00           |
| <b>TOTAL AMOUNT DUE TO THE TENANT</b>   | <b>\$555.65</b> |

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$555.65. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2009.

---

Dispute Resolution Officer