

## **DECISION**

Dispute Codes      MND MNR MNSD FF  
                             MNSD

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution by the Landlord and Tenant.

The Landlord applied on May 11, 2009 to obtain a Monetary Order to keep all or part of the security deposit, for unpaid rent, for damage to the unit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant applied on April 16, 2009 to obtain a Monetary Order for the return of her security deposit.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 13, 2009. Mail receipt numbers were provided in the Landlord's testimony. The Tenant was deemed to be served the hearing documents on May 18, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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 17, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on April 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order pursuant to sections 38, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on February 1, 2009 and ended on March 22, 2009 when the Tenant vacated the rental unit. Rent was payable on the first of each month in the amount of \$650.00 and the Tenant paid a security deposit of \$325.00 on February 1, 2009.

The Landlord did not complete a move-in inspection report and did not complete a move-out inspection report. The Landlord argued that he could not complete the move out inspection report because the Tenant moved out prior to the end of the month.

The Tenant argued that she told the Female Landlord over the phone on March 17, 2009 that things were not working out for her there and that she would be moving out at the end of March 2009. The Tenant testified that she was asked to call back and speak with the Male Landlord as he dealt with the tenancy issues. The Tenant argued that when she called back on March 19, 2009 to discuss the issues with the Male Landlord that he became angry and that he told the Tenant she would have to vacate the rental unit by the weekend. The Tenant advised that her mother called the Landlord and that he became angry with her mother and told her that the Tenant would need to provide 1 months notice and that she was to be out of the rental unit by the weekend.

The Landlord testified that he did not tell the Tenant she had to vacate the rental unit by the weekend but that he did have a conversation with the Tenant, her mother, and the

Tenant's father, whereby the Landlord advised all of them that the Tenant was required to give 1 month's written notice to end the tenancy.

The Landlord has applied for damages to the suite but stated he was not claiming an amount for the damages. The Landlord claimed that the carpet was lifted and that there was a scratch to the exterior door.

The Tenant confirmed that a scratch was made to the exterior of the door when she was moving her furniture out of the rental unit.

The Landlord confirmed that he is seeking a monetary claim of \$700.00 to cover the cost of April 2009 rent of \$650.00 and \$50.00 for the filing fee.

The Tenant is requesting the return of double her security deposit.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant 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 Applicant 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 Applicant 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

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.

### Landlord's Claim

Section 45 of the *Residential Tenancy Act* allows for a tenant to 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. In this case the Tenant would have had to provide the Landlord written notice February 28, 2009 if she wanted to end the tenancy as of March 31, 2009; however in this case the Tenant provided verbal notice on March 15, 2009. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above and I hereby allow his claim of \$650.00 for loss of rent for April 2009.

As the Landlord has been successful in his application I hereby allow him to recover the cost of the filing fee from the Tenant.

The Landlord has requested to retain the Tenant's security deposit in partial satisfaction of his claim. Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage. I find that the Landlord would have had to apply for dispute resolution by April 11, 2009 in order to request to retain the Tenant's security deposit. The Landlord did not file until May 11, 2009. Based on the aforementioned the

disbursement of the Tenant's security deposit will be handled in the Tenant's claim listed below.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for April 2009	\$650.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$700.00</b>

#### Tenant's Application

The Tenant has requested return of double her security deposit as she provided her forwarding address to the Landlord's address, serving it personally to the Landlord's spouse, in writing on March 27, 2009.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit. I find that the Tenant has succeeded in proving the test for

damage or loss as listed above and approve her claim for the return of double the security deposit as follows:

### **Monetary Order**

Double the Security Deposit 325.00 x 2	\$650.00
Interest on Security deposit of \$325.00 from February 1, 2009	0.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$650.00</b>

### Off-Set Claims

I hereby Order the Monetary Order owed to the Tenant in the amount of \$650.00 be deducted from the Monetary Order owed to the Landlord in the amount of \$700.00 leaving a balance payable to the Landlord in the amount of \$50.00 (\$700.00 - \$650.00).

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. 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: July 20, 2009.

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Dispute Resolution Officer