

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of repairs, the filing fee and to retain the security deposit in partial satisfaction of his claim. The tenant applied for the return of double her security deposit, compensation and the filing fee.

The landlord applied for dispute resolution on May 15, 2009 and amended his application on June 11, 2009. In the initial application, the landlord did not mark the box for "return of the security deposit" but did so in his amended application when he filed "additional claim against the deposits". Having reviewed the evidence filed by the landlord, I find that he applied to claim damages against the security deposit in a timely manner and simply neglected to check mark the box on May 15, 2009.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs and the filing fee? Did the tenant provide the landlord with her forwarding address in writing? Is the tenant entitled to the return of double her security deposit?

Background and Evidence

The tenancy started on February 15, 2009 and ended on April 30, 2009. The rent was \$850.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$425 and a pet damage deposit of \$200.00.

The tenant served the landlord with a one month notice to end tenancy on April 01, 2009 with an effective date of April 30, 2009.

Tenant's Application

The tenant stated that she paid a pet damage deposit to keep two cats in the rental unit and has filed a receipt for the damage deposit which confirms that she had the landlord's permission to keep two cats. The landlord did not dispute this. However, when the landlord found out that one of the cats was pregnant, he gave the tenant four days notice to have the pregnant cat removed from the rental unit.

The tenant also stated that the landlord made their lives difficult by serving them several notices to enter for repairs which were not done and on one occasion he was video taped looking through their drawers, closets and under their bed in their absence. In addition, the landlord and the co tenant engaged in ongoing heated arguments.

The tenant stated that due to the above problems and the deteriorating relationship between the two parties, the tenant decided to move out and on April 01, 2009 gave the landlord notice to end the tenancy effective April 30, 2009. For the above reasons, the tenant claimed that she suffered a loss of quiet enjoyment and therefore the landlord should return rent for April and pay for moving costs.

The tenant is claiming the following:

1.	Return of April rent	\$850.00
2.	Moving costs	\$300.00
3.	Phone reconnection fee	\$80.00
4.	Double the security deposit	\$1250.00
6.	Filing fee	\$50.00
	Total	\$2,530.00

Landlord's Application

The landlord stated that the co tenant was very aggressive and swore at him. The tenant did not dispute this. The landlord argued that he was looking under the bed and in the closet for the cat and that he looked in the drawer because he noticed that there was heat coming out of it.

The landlord stated that the notices to enter for repairs were valid and he did carry out most of the repairs that were required.

The landlord stated that the tenant gave him the notice to end tenancy on April 01 and was very uncooperative about showing the unit to prospective tenants. As a result, the landlord incurred extra advertising costs and found a tenant for May 02, 2009. He gave the new tenant a rebate in rent of \$40.00. The landlord also stated that the tenant made excessive use of the electric heater and this was in conflict with the terms of the tenancy agreement. The landlord has calculated the amount that he is claiming based on the utility bills, but has not filed any utility bills as evidence to support his claim.

The landlord stated that during the move out inspection, the tenant agreed to a \$20.00 deduction off the security deposit. The landlord is also claiming \$10.00 to repair a light fixture, which by his own admission was fine at the time of the move out inspection.

The landlord is claiming the following:

1.	Advertising	\$62.96
2.	Loss of income	\$40.00
3.	Utilities	\$59.11
4.	Repair to light fixture	\$10.00
5.	Deduction agreed to by tenant	\$20.00
6.	Filing fee	\$50.00
	Total	\$242.07

Analysis

Tenant's application:

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Based on the sworn testimony of both parties and documentary evidence filed by the tenant, I find that the tenant has not proven her case of loss of quiet enjoyment and harassment by the landlord.

Therefore, I find that the tenant is not entitled to the return of rent for April, moving costs and the telephone connection fee. In addition, the landlord applied to retain the security

deposit in a timely manner and therefore the tenant is not entitled to the return of double the security deposit.

The tenant has not proven her case and therefore is not entitled to the recovery of the filing fee.

Landlord's application:

Based on the sworn verbal testimony and documentary evidence filed by the landlord, I find that the landlord is entitled to the **\$40.00** rebate in rent, that he gave the new tenant and to **\$20.00** that the tenant agreed to pay. The landlord has not filed hydro bills to support his claim for utilities and therefore is not entitled to his claim of \$59.11 for utilities. The light fixture was in working condition at the time of the move out inspection and therefore I find that the landlord is not entitled to \$10.00 that he is claiming for its repair. The landlord must also bear the cost of advertising in the amount of \$62.96. The landlord has proven a portion of his case and therefore I will award him **\$25.00** towards the filing fee.

Overall the landlord has established a claim for \$85.00. I order that the landlord retain this amount from the security deposit of \$625.00 and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$540.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$540.00**.

Dated July 31, 2009.

Dispute Resolution Officer