

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, to keep all or part of the pet and security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was not done in accordance with section 89 of the *Act*, as they were sent via registered mail to the Tenant's previous post office box number, an address that the Landlord did not know for certain that the Tenant was still receiving mail at. The Tenant however confirmed receipt of the registered mail package.

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 under sections 38, 68, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy began as a fixed term tenancy beginning March 29, 2009 and set to expire on March 29, 2009 at which time the tenancy would continue as a Month to Month tenancy. Rent was payable on the 29<sup>th</sup> of each month in the amount of \$600.00 and the

Tenant paid a security deposit of \$300.00 on March 19, 2008 and a pet deposit of \$300.00 on approximately August 1, 2008.

The Landlord testified that she did not conduct a move-in or a move-out inspection report.

The Tenant testified that she vacated the rental unit on April 14, 2009 after being told by the Landlord on March 20, 2009 that she would be evicted on July 1, 2009 so the Landlord could complete renovations to the rental unit. The Tenant argued that the Landlord made her sign a notice stating that the Landlord was evicting the Tenant however the Landlord did not provide the Tenant with a copy of this form. The Tenant stated that she began looking for another place after the Landlord made her sign the notice, and that she gave the Landlord more than ten days notice that she was vacating the rental unit. The Tenant claims that the Landlord did not provide her with compensation for issuing the notice to end tenancy.

The Landlord testified that on March 20, 2009 she had the Tenant sign a hand written notice which provided the Tenant with notice that the Tenant would be evicted on July 1, 2009. The Landlord stated that this eviction notice was not on the approved form and that it was simply a hand written note that she had the Tenant sign. The Landlord confirmed that she did not provide the Tenant with a copy of the eviction notice.

The Landlord is seeking a monetary claim from the Tenant as follows:

\$50.00 Power Connection - The Landlord claims the Tenant had the power disconnected when she vacated the rental unit on April 14, 2009 and the Landlord had to put the power in her own name after the Tenant vacated the unit. The Landlord did not supply evidence in support of her claim but feels the Tenant is responsible for hydro costs until the end of April 2009.

\$100.00 Ceiling Painting - The Landlord has claimed for the cost to paint the ceiling because the Tenant painted the walls in two rooms and got paint on the ceiling. The

Tenant argued that she had requested that the Landlord provide her with ceiling paint however the Landlord refused to purchase more paint. The Landlord claims that the Tenant never asked for ceiling paint. The Landlord did not provide evidence in support of the cost to repaint the ceiling.

\$102.35 for Carpet Cleaning – The Landlord submitted a receipt for when the Landlord had the carpets cleaned prior to the tenancy. The Landlord claims that the Tenant was responsible for cleaning the carpets at the end of the tenancy. The Tenant argued that the carpets were removed at the end of her tenancy. The Landlord confirmed that she did not have the carpets cleaned and that she removed the carpets at the end of the tenancy.

\$44.99 Lock and Key – The Landlord claims that the Tenant failed to return all of the keys to the rental unit and that the Landlord had to install a new lock. The Tenant claimed that she returned all the keys. The Landlord did not provide evidence in support of the cost of the lock and key purchased.

\$73.00 Bathroom Faucets – The Landlord testified that she installed a new faucet in the bathroom tub and sink in July 2008 and that both faucets were broken at the end of the tenancy. The Tenant argued that the bathroom was not heated and that base of both taps cracked as a result of the cold winter and that they were both tightened too tight when installed. The Landlord did not provide evidence to the cost of the taps or that they were new in July 2008.

\$33.00 Repair Hole in Wall – The Landlord claims that the Tenant put a hole in the bedroom wall and that it cost the Landlord \$33.00 in supplies and labour to repair the hole. The Tenant argued that the hole was there prior to the beginning of her tenancy and that the hole was created because there was no door stop in the bedroom and the bedroom door handle went through the wall. The Landlord did not provide evidence to support that the hole did not exist at the onset of the tenancy.

\$32.50 Remove and Reinstall Stained Plywood - The Landlord claims that the stained plywood was from cat urine. The Tenant argued that the stain was a result of accidentally spilling a container of Pinesol cleaner and that this was just a bare piece of plywood floor in a utility room. The Landlord provided an invoice of \$22.50 for the removal and reinstall of the plywood, however did not provide evidence that this stain did not exist at the onset of the tenancy.

\$90.00 Window Blinds – The Landlord claims for window blinds that were removed from the rental unit windows. The Tenant confirmed that she removed the blinds but that they were stored safely in the storage room at the rental unit and that the Landlord would have found the blinds when she emptied the rental unit before doing the renovations.

Three Larger Blinds – The Landlord has claimed for three larger blinds that she states she couldn't find but has not replaced as of yet. The Tenant argued that all of the blinds were stored at the rental unit and that they were all in good shape with no damage to them.

\$11.50 Waste Removal – The Landlord claims that she had to clean up waste from the outside of the rental unit and that she had to take this waste to the landfill. The Tenant argued that she cleaned up the rental unit and yard. The Landlord did not provide evidence in support of this claim.

\$25.70 Hooks – The Landlord claims that she had to replace hooks that were taken off of the wall in the rental unit. The Tenant argued that the hooks were in the drawer above the oven. The Landlord did not provide evidence to support the amount of her claim.

The Tenant testified that she did not provide the Landlord with her forwarding address in writing.

## Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord 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, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, 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.

In the absence of a move-in and move-out condition inspection reports and receipts in support of the Landlord's claims, I find that the Landlord has failed to prove the test for damages as listed above and I hereby dismiss the Landlord's monetary claims, without leave to reapply.

Section 24(2) of the *Residential Tenancy Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential

property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony and evidence before me the Landlord has failed to comply with the regulations, as she did not complete a move-in or a move-out inspection report, and the Landlord has extinguished her right to claim against the Tenant's security and pet deposits.

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 testimony and evidence before me the Tenant did not provide the Landlord with her forwarding address in writing so the Landlord is not 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 is entitled to the return of her pet and security deposits plus interest in the amount of \$605.42 (\$300.00 security deposit plus interest of \$3.54 from March 19, 2008 and \$300.00 pet deposit plus interest of \$1.88 from August 1, 2008.)

I find that the Landlord is not entitled to recover the cost of the filing fee as she was not successful with her claim.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize herself with her rights and responsibilities as set forth under the *Residential Tenancy Act*.

In regards to the Tenant's claims and evidence relating to the Landlord issuing a two month notice to end tenancy without providing compensation to the Tenant, I am not able to neither hear nor consider the Tenant's claim during these proceedings as this hearing was convened solely to deal with the Landlord's application. That being said, I must point out that the Tenant is at liberty to make their claims in a separate application and to resubmit their evidence.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$605.42. The order must be served on the Landlord 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: August 24, 2009.

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Dispute Resolution Officer