

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, to keep all of the security deposit, 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 done in accordance with section 89 of the *Act*, sent via registered mail on May 27, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant was deemed to be served the hearing documents on June 2, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

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, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant entered into a fixed term tenancy commencing on March 1, 2009 and set to expire on September 1, 2009. The rent was payable on the first of each month in the

amount of \$625.00 and the Tenant paid a security deposit on January 31, 2009 in the amount of \$300.00.

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

The Landlord argued that the Tenant provided her two weeks verbal notice that she would be ending the tenancy early and that the Tenant vacated the rental unit on approximately April 28, 2009. The Landlord advised that the Tenant had paid rent for the full month of April 2009. The Landlord testified that she informed the Tenant that she was in breach of a fixed term tenancy agreement and that the Tenant told the Landlord that she was a minor and as a result the tenancy contract did not apply to the Tenant.

The Tenant testified that she did sign the fixed term tenancy agreement and that she moved out of the rental unit early because she was not happy with the living arrangements. The Tenant argued that when she informed the Landlord that she was moving out early that she gave the Landlord the option to have the Tenant move out May 1, 2009 or June 1, 2009 and that the Landlord told the Tenant that she wanted the rental unit vacated by May 1, 2009. The Tenant confirmed that she did not have documentary evidence in support of this statement.

The Tenant testified that the Landlord reminded the Tenant that she signed a fixed term tenancy agreement and that the Tenant would be responsible for the rental unit until September 1, 2009. The Tenant stated that she was set on leaving, regardless of the tenancy agreement, and moved out prior to the end of April, 2009.

The Landlord referred to her documentary evidence in support of her testimony that she was able to re-rent the rental unit effective May 1, 2009 for the monthly rent of \$575.00 which is \$50.00 less than what she was receiving from the Tenant. The Landlord has submitted a claim for \$200.00 which represents the lost rent of \$50.00 per month for the remainder of the Tenant's fixed term tenancy from May 1, 2009 to September 1, 2009.

The Landlord testified that upon inspection of the rental unit just prior to the new tenants taking occupancy the Landlord found that the rental unit required cleaning. The Landlord referenced her documentary and picture evidence in support of her testimony that the rental unit needed to be cleaned and that the Landlord spent approximately 45 minutes cleaning the Tenant's bedroom and three hours cleaning the common areas. The Landlord stated that while there was cleaning required there was no damage caused to the unit.

The Tenant argued that she had vacuumed her bedroom, had the bedding dry cleaned, cleaned the mirrors in the living room, and assisted with cleaning the floor in the kitchen however the Tenant moved out a few days prior to one remaining tenant. The Tenant argued that the mess was created by the tenant who remained living in the rental unit after the Tenant moved out.

### Analysis

The Tenant has claimed that she was not bound to the tenancy agreement as she was a minor at the time she signed the agreement. Section 3 of the *Residential Tenancy Act* (Act) stipulates that despite section 19 of the *Infants Act*, minors are able to enter into tenancy agreements and that the *Act and Regulations* are enforceable against the minor. Based on the aforementioned I find that in this case the tenancy agreement entered into by the Landlords and Tenant is enforceable.

I find that in order to justify payment of damage or loss 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 bears the burden of proof. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The evidence and testimony supports that the Tenant entered into a fixed term tenancy with the Landlord, which was scheduled to expire on September 1, 2009, and that the Tenant ended the tenancy early, on April 30, 2009, by providing the Landlord with two weeks verbal notice that she was moving out early. Based on the above I find that the Tenant breached section 45(2) of the *Act* by ending the tenancy prior to the expiry of the fixed term, which caused the Landlord to suffer a loss of rent in the amount of \$50.00 per month, for the four months remaining of the fixed term period. I find that the Landlord mitigated her losses pursuant to section 7(2) of the *Act* as she did what was reasonable by re-renting the unit at a lower rent enabling her to re-rent the unit as quickly as possible. I hereby approve the Landlord's claim in the amount of \$200.00 for loss of rent (4 x \$50.00).

The Landlord has testified that she did not complete a move-in or a move-out inspection report in contravention of sections 23 and 35 of the *Act*. I note that sections 24 and 36 of the *Act* stipulate that if the Landlord fails to complete the move-in and move-out inspection report then the Landlord's right to claim against the security and pet deposits is extinguished; however this does not prevent the Landlord from claiming damage or loss under section 67 of the *Act* nor does it prevent the Director from deducting from the security deposit any claims awarded to the Landlord under section 72(2)(b) of the *Act*.

I find that the evidence supports the Landlord's testimony that she did not receive the Tenant's forwarding address until May 13, 2009 and I note that the Landlord filed her application for dispute resolution twelve days later, on May 25, 2009.

The Tenant testified that she vacuumed her bedroom carpet, cleaned the kitchen floor, wiped the living room mirrors, cleaned out her possessions from the bathroom cabinet and rental unit prior to her departure, but that one tenant remained living in the rental unit for a few days after the Tenant vacated the rental unit. Section 32(3) of the *Act* states that during a tenancy a tenant is responsible for the rental unit and common areas and is responsible for repair that is required by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In this case I find that the Tenant was responsible for the rental unit until the expiry of her tenancy or until the

Landlord entered into a new agreement and that the evidence before me supports that the rental unit was not left reasonably clean as required under section 37(2)(a) of *Act*, which caused the Landlord to suffer a loss. I hereby approve the Landlord's claim for cleaning in the amount of \$35.00 (1.75 hours x \$20.00 per hour).

The Landlord has been primarily successful in her claim and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

In regards to the Tenant's claim relating to the return of her security deposit, 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.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Loss of rent for duration fixed term tenancy (May 1, 2009 to September 1, 2009) 4 x \$50.00	\$200.00
Cleaning costs	35.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$285.00</b>
Less Security Deposit of \$300.00 plus interest of \$0.00	- 300.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$15.00</b>

The Landlord is hereby ordered to issue payment of \$15.00 for the balance of the off-set amount listed above.

### Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$15.00. 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: September 08, 2009.

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Dispute Resolution Officer