



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant and a cross application by the landlord. The tenant seeks the return of the security deposit and compensation under Section 38 of the Residential Tenancy Act (the Act) for double the return of the security deposit. The landlord seeks to recover unpaid rent and late charges, end of tenancy costs related to the move out of the tenant, and to recover the filing fee for their application.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed? Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy started July 01, 2007 and the tenant vacated May 31, 2009. At the outset of the tenancy the landlord collected a security deposit in the amount of \$312.50 which the landlord still holds. At the end of the tenancy the parties agree there was no move out inspection conducted by the landlord and the tenant, although the landlord conducted an inspection on June 01, 2009 and completed a move out report, which, in part included an estimate for 5 hours of cleaning, carpet cleaning and cleaning of drapes. The tenant testified that she had arranged for the rental unit to be by another occupant of the residential property, at the cost of the tenant, and then have the carpets professionally cleaned, as she was physically not able to clean the rental unit herself, but that this plan was halted by the building manager of the day, whom, the landlord advised, is no longer in the employ of the landlord – but a statement from the individual was submitted, which in part supports the tenant's testimony.

The tenant also testified that upon vacating the rental unit she provided the landlord with a piece of paper with her written forwarding address with which to forward the security deposit - which was not received. As a result, the tenant is now applying for double the security deposit.

The landlord's representative disputes that the tenant provided their forwarding address, claiming they had no record of one until the tenant's Notice for Dispute Resolution was received by them in early October, and the landlord then filed their application for dispute resolution to retain the security deposit in partial satisfaction of their monetary claim. Specifically, the landlord seeks:

- \$250 for unpaid rent for December 2008 – supplied accounts ledger.
- \$100 for late fees for the months of December, January, February and March of 2009 at \$25 per month - provided in the tenancy agreement – supplied accounts ledger
- \$95 for cleaning of drapes - provided in the tenancy agreement – supplied receipt for \$25
- \$120 for cleaning of Carpets - provided in the tenancy agreement – supplied invoice / work order for “60-70”.
- \$125 for cleaning of suite – supplied invoice for amount

The tenant testified that her rent was paid directly from Income Assistance, and she was not aware or ever notified that there was outstanding rent or late fees assigned to her tenancy – had she been made aware she would have resolved the matter. The landlord's representative could not determine why the outstanding monies issue was not conveyed earlier to the tenant – but that due to the “soft” rental market conditions it may have been overlooked in the interest of retaining or supporting the existing tenancy. The tenant denies she owes any unpaid rent or that the landlord ever received rent late.

### **Analysis**

On the preponderance of all the evidence before me and on the balance of probabilities I have reached a decision.

**I prefer** the tenant's testimony that on May 31, 2009 she arranged for the rental unit to be cleaned in accordance with the tenancy agreement. However, regardless of how the cleaning of the suite and how the professional cleaning services were arranged, the

cost was to be the responsibility of the tenant. In this respect, I grant the landlord recovery for the end of tenancy costs as submitted into evidence - \$125 for cleaning, \$28 for drapes cleaning and \$70 for carpet cleaning for a total of **\$223** for cleaning.

I do not accept the landlord's claim for unpaid late fees totalling \$100. **I find** it unreasonable that the landlord withheld notification to the tenant of the accumulation of late fees and did not provide the tenant with opportunity to rectify the late payment of rent so as to avoid the recurring charges. **I dismiss** this portion of the landlord's claim without leave to reapply. I further find it unreasonable that the landlord withheld notification to the tenant that she owed unpaid rent for the month of December 2008, and for which portion of their claim the landlord has not sufficiently supported.

Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply. As the landlord's application has partial merit, I grant the landlord a portion of their filing fee in the amount of **\$25** for an entitlement quantum of **\$248**.

**I prefer** the tenant's evidence and testimony that she provided the landlord with their written forwarding address on May 31, 2009. Consequently, I find the landlord has not returned the security deposit or applied for dispute resolution within the parameters prescribed by the Act. Section 38 of the Residential Tenancy Act provides as follows:

#### **Section 38(1)**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

**I find** that the tenancy ended on May 31, 2009, and that the tenant provided (their) forwarding address in writing on that date. **I find** the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

Therefore, **I find** the tenant has established a claim for the security deposit of \$312.50, accrued interest of \$7.08, and double the base amount of the security deposit in the amount of \$312.50, for a total of **\$632.08**. I deduct from this amount the landlord's entitlement of **\$248**, for a Monetary Order in favour of the tenant in the amount of **\$384.08**.

### **Conclusion**

**The tenant is being given** an Order under Section 67 of the Act for **\$384.08**.

This Order may be filed in the Small Claims Court and enforced as an order of that

Dated November 20, 2009.