

DECISION

Dispute Codes MND MNSD FF
 MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution one filed by the Landlord on August 14, 2009 which was amended on August 20, 2009, and one filed by the Tenants on August 20, 2009 which was amended on August 21, 2009.

The Landlord applied to obtain a Monetary Order for damage to the unit, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants applied to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, served personally to the Tenants on August 18, 2009. The Tenants were not served a copy of the Landlord's amended application. It was discussed at the hearing that the only change made on the Landlord's application was to reduce the amount claimed for the monetary order from \$5,393.25 to \$5,000.00. As the only change was to reduce the amount of the claim I have allowed the amended application and proceeded with the hearing. The Tenants confirmed that they received a copy of the original application but not the amended application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, with the original application sent via registered mail on August 21, 2009 and the amended application served personally to the Landlord's office on August 21, 2009. The Landlord confirmed receipt of both the original and amended application.

The Landlord and both Tenants 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 examine each other. The male Tenant provided all of the testimony on behalf of the Tenants.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act* (Act)?

Are the Tenants entitled to an Order under sections 38 and 72 of the *Residential Tenancy Act* (Act)?

Background and Evidence

The undisputed facts are the fixed term tenancy began on August 1, 2008 and was set to switch over to a month to month tenancy after July 31, 2009. The Tenancy ended on July 30, 2009 after the Tenants provided the Landlord with written notification to end the tenancy. The rent was payable on the first of each month in the amount of \$2,000.00, there was no rental arrears, and the Tenants paid a security deposit of \$1,000.00 on July 25, 2008. The Landlord did not complete a move-in inspection report in the presence of the Tenants and the Landlord did not schedule a move-out inspection with the Tenants. The Tenants provided the Landlord with their forwarding address and telephone number in writing on July 30, 2009 at the same time they returned the keys to the rental unit.

The Landlord confirmed that the rental unit has not been re-rented and that it is up for sale at this time.

The Landlord provided testimony to confirm that the required/requested repairs have not been completed and the documents provided in the Landlord's evidence are estimates for the repairs.

The Landlord is seeking a monetary claim for \$1,622.25 to replace the carpets because they are stained. The Landlord could not provide testimony to the exact age of the house but she suspected it was between 10 to 15 years old. The Landlord confirmed that the carpets have not been replaced since she has been employed by the owner of the house.

The Landlord claims there are burns on the vinyl deck and that these burns appear to be from cigarettes. The Landlord argued that because the deck is vinyl it cannot be repaired and must be replaced. The Landlord pointed out that the deck repair quote of \$3,271.00 included costs to repair a door knob and change the master bedroom door knob from a locking one to a regular style that was present at the onset of the tenancy.

The Tenant testified that they attempted to contact the Landlord on several occasions to schedule a move out inspection however the Landlord failed to return their calls. The Tenant argued that they left the rental unit in clean undamaged condition.

The Tenants confirmed that the Landlord who appeared at today's hearing is the Landlord that the Tenants solely dealt with.

Analysis

Landlord's Application

I find that in order to justify payment of damage and 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, 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.

The testimony supports that there was no move-in inspection report completed and there was no move-out inspection report completed. Based on the aforementioned and a review of the documentary evidence there is no evidence to support the condition of the rental unit at the onset of the tenancy and no evidence to support the condition of

the rental unit at the end of the tenancy. Simply providing an estimate for proposed work does not prove the actual condition of an item it merely supports that an estimate was requested and received.

In the presence of contradictory evidence and testimony as to the current condition of the rental unit I find that the Landlord has failed to prove the test for damage and loss, as listed above and I hereby dismiss the Landlord's claim, without leave to reapply.

As the Landlord has not been successful with their application I decline to award the Landlord with recovery of the filing fee.

Tenant's Application

I find that in order to justify payment of loss under section 67 of the *Act*, it is important to note that the party claiming the damage or loss, in this case the Tenants, bear the burden of proof.

In this case the Landlord confirmed receiving the Tenants' forwarding address, in writing, on July 30, 2009. The Landlord filed their initial application for Dispute Resolution to keep the security deposit on August 14, 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 deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to either return the Tenants' security deposit or file for dispute resolution no later than August 14, 2009.

Based on the above, I find that the Landlord has complied with Section 38(1) of the *Act* and filed an application for dispute resolution on August 14, 2009 and that the Landlord is not subject to Section 38(6) of the *Act*, which requires the return of double the security deposit.

The Landlord was not successful with their application which means the Tenant's security deposit must be administered in accordance with Section 38 of the *Act*, and returned to the Tenants with interest.

I find that the Tenants have been partially successful with their application and are entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Return of Security Deposit	\$1,000.00
Interest owed on the Security Deposit of \$1, 000.00 from July 25, 2008 to December 11, 2009	6.56
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,056.56

Conclusion

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

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$1,056.56. The Order must be served on the respondent 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: December 11, 2009.

Dispute Resolution Officer