

## **DECISION**

Dispute Codes      MNR MNSD FF  
                             MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord is seeking a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction for their claim, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking a Monetary Order for the return of double his security deposit.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant by the Landlord, at the Landlord's office on August 27, 2009.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord by the Tenant, at the Landlord's office on August 27, 2009.

Both the Landlord and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order for loss of one month's rent, to keep the security deposit, and recover of the filing fee under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order for the return of his security deposit or double the security deposit in accordance with section 38 of the *Residential Tenancy Act*?

### Background and Evidence

The parties entered into a written month to month tenancy agreement for unit # 325 effective March 20, 2009. Rent was payable on the first of each month in the amount of

\$599.00 and the Tenant paid a security deposit of \$299.50 on March 17, 2009. The Tenancy agreement was amended on April 3, 2009 when the Tenant moved out of unit # 325 and into unit #311.

The Tenant testified that he moved into unit #325 and that he noticed a “strong smell of shampoo”. The Tenant argued that after two nights in the rental unit he awoke with a headache and sore throat. The Tenant stated that he informed the resident manager of the strong smell and requested that the Property Manager attend to the rental unit as soon as possible. The Tenant argued that the Property Manager attended to unit #325 and admitted that he could smell something, at which time the Property Manager offered the Tenant to move into unit # 311.

The Property Manager testified stating that he does not recall acknowledging the presence of a smell in unit # 325 however he liked the Tenant and wanted to retain his business so offered the Tenant the option to move into unit # 311.

The Tenant testified that he was given the opportunity to walk through unit # 311 with the resident manager after which the Tenant agreed to move into unit #311.

The Tenant argued that after spending a few nights in unit # 311 he awoke again with a sore throat and that a chemical smell woke him up. The Tenant then argued that there was also a mouldy smell in unit # 311 and he had to leave due to both smells.

The Landlord noted that he believes the carpet in unit # 311 was new and that the smells could have been coming from the new carpet smell.

The Tenant argued that he gave the resident manager a note on April 9, 2009 which stated that the Tenant was writing to notify the manager that he was terminating his residence at this address, due to the smells, as soon as possible.

The Tenant stated that he forgot to include his forwarding address in his termination letter so he provided the Landlord a copy of his forwarding address in the letter dated July 29, 2009 and it was included in the Tenant's evidence to the Landlord.

The Landlord testified and denied receiving any written notice of termination from the Tenant and confirmed that the Landlord received a copy of the Tenant's July 29, 2009 typed letter, which his forwarding address, in the regular mail on August 13, 2009.

The Landlord confirmed that the rental unit was not re-rented until June 1, 2009 and he is seeking a monetary claim for loss of rent for May 2009 and to recover the cost of the filing fee.

## Analysis

### **Landlord's Claim**

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, 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 Tenant 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 this case the Tenant ended a month to month tenancy, effective April 30, 2009, after providing the Landlord with notice to end tenancy on April 9, 2009, which does not comply with the *Act*. Section 45 of the *Acts* provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is received by the Landlord on the day before the day in the month that rent is payable under the tenancy agreement. In this case if the tenancy were to be ended in accordance with the *Act*, notice would have had to have been received by the Landlord on March 31, 2009 to end the tenancy on April 30, 2009.

The testimony supports that the Landlord was not able to re-rent the unit until June 1, 2009 and that the Landlord suffered a loss of May 2009 rent in the amount of \$599.00. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above, and I hereby approve their claim for loss of rent of \$599.00.

## **Tenant's Claim**

The tenant has requested the return of double his security deposit and has claimed \$600.00. I note that the Tenant paid \$299.50 as a security deposit and if awarded the return of double the security deposit it would amount to \$599.00.

The testimony confirms that the Tenant moved out of the rental unit on approximately April 10, 2009 after providing notice to end the tenancy on April 9, 2009 and after paying the rent for the full month of April 2009.

The Tenant confirmed that he did not provide the Landlord with his forwarding address in writing until the Landlord was given the Tenant's July 29, 2009 letter. The testimony supports that the Landlord received the forwarding address on August 13, 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 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 above, I find that the Landlord has complied with Section 38(1) of the *Act* as he made application for dispute resolution to keep the security deposit on August 27, 2009, fourteen days after receiving the Tenant's forwarding address in writing. Based on the aforementioned the Landlord is not subject to Section 38(6) of the *Act* and the Tenant is not entitled to return of double his security deposit.

The Tenant has claimed that he should be entitled to the return of his security deposit as he was not able to live in the rental units due to the chemical and mouldy smells. In the case of unit # 325 I note that the Tenant signed a move-in inspection report indicating that everything was fine in the rental unit. I find the Landlord's actions of allowing the Tenant to relocate to a different rent unit to be more than reasonable given the short period of time the Tenant was in the rental unit.

In regard to unit # 311 I note that the Tenant was given the opportunity to inspect the rental unit prior to relocating to that unit and there is contradictory testimony as to the presence of odour in the unit. I find that the Tenant has failed to allow the Landlord time

to deal with the complaints of odours, as required under the Act, and instead the Tenant broke the tenancy agreement in contravention of the Act.

Based on the aforementioned, I find that the Tenant has failed to prove his entitlement to the return of his security deposit, and in light of the presence of the Landlord's award, I hereby dismiss the Tenant's application, without leave to reapply.

**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 May 2009	\$599.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	<b>\$649.00</b>
Less Security Deposit of \$299.50 plus interest of \$0.00	- 299.50
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$349.50</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$349.50. The Order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

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 21, 2009.

---

Dispute Resolution Officer