

## **DECISION**

Dispute Codes      MNSD O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit and first month's rent and to recover the cost of the filing fee from the Landlord for this application.

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 male Landlord on September 22, 2009.

The Landlords and the Tenant, and the Tenant's witness 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

Has the Tenant proven entitlement to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony provided that the Tenant and her witness met with the male Landlord on July 5, 2009 to view the rental unit at which time the parties entered into a verbal agreement that the Tenant would begin the tenancy on August 1, 2009 for the monthly rent of \$1,050.00 payable on the first of each month which included the cost of internet services.

The Tenant testified that during the July 5, 2009 meeting the Landlord explained that he was still renovating the rental unit and would have the internet connected and the following renovations completed prior to the beginning of the tenancy: replacement of the kitchen floor, cupboards, the exterior walkway and stairs leading into the rental unit.

The Tenant's witness testified and confirmed that they were advised by the male Landlord that the renovations would be completed prior to the onset of the tenancy. The Witness stated that the kitchen floor was old linoleum that was very dirty and had tears and rips in it and the cupboard doors were misaligned and the latches did not work on all of them.

The male Landlord confirmed that he told the Tenant that the bathroom renovations and the exterior walkway would be completed prior to the onset of the tenancy but that he did not promise the kitchen floor would be replaced.

The Tenant testified that the male Landlord contacted her a few days after they entered into the verbal agreement to advise that one of his family members was going to occupy the rental unit for the month of the August and requested that the Tenant not begin her tenancy until September 1, 2009.

The male Landlord confirmed that he called to postpone the onset of the tenancy by one month because the renovations were not completed not because of a family member moving in. The male Landlord then provided testimony that the rental unit was offered to a family member in need who moved into the rental unit on August 2, 2009.

The Tenant advised that she attended the rental unit on August 31, 2009 and met with the female Landlord at which time they completed a tenancy agreement and the Tenant provided the female Landlord with a security deposit of \$525.00 and first month's rent of \$1050.00 in exchange for the keys to the rental unit. The Tenant stated that the Landlords did not provide her with receipts for the payments nor a copy of the tenancy agreement.

The Tenant stated that she noticed that all of the renovations were not completed and initially thought she would move in regardless however when she began to move her possessions into the rental unit she realized how bad the kitchen floor was and how she felt she could not set her children down on the floor. The Tenant argued that she later determined that the internet had not been connected.

The Tenant testified that she called the female Landlord on September 1, 2009 at approximately 10:00 a.m. and told her that she could not move in as the floor was unsanitary and the internet was not connected as previously agreed. The Tenant argued that the female Landlord told her that she would have to wait to discuss these issues with the male Landlord when he returned to town on September 3, 2009.

Both Landlords confirmed that the male Landlord could not complete the renovations because he had to leave town to attend to a family illness. The male Landlord confirmed that he had planned to return to town on September 3, 2009. The Landlords confirmed that they did not submit evidence in response to the Tenant's claim.

The Tenant stated that later that day she opened the fridge and found rust leaking into the inside of the fridge which was dirty and mouldy. The Tenant argued that she called the female Landlord back later that afternoon and told her that she would definitely not be moving in.

The witness stated that when the Tenant took possession of the rental unit the exterior walkway was not completed, the kitchen floor and cupboard renovations were not completed, and the internet was not connected, as previously agreed to in the negotiation of the tenancy agreement.

The Tenant stated that the male Landlord did not call her so she sent him an e-mail on September 4, 2009.

The female Landlord argued that she told the Tenant she was not aware of the condition of the fridge and that the Landlord would order a fridge to be delivered to the rental unit as soon as possible.

The female Landlord confirmed receipt of the Tenant's September 4, 2009 e-mail and read the male Landlord's response that was sent via e-mail on September 5, 2009.

The male Landlord testified that they had offered to return \$900.00 to the Tenant as reimbursement of her security deposit of \$525.00 and \$375.00 reimbursement of rent. The Landlord argued that this offer to settle is no longer on the table.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

After careful review of the evidence before me I find that the Tenant and male Landlord entered into a verbal tenancy agreement which was to take effect August 1, 2009 and the Landlord breached this agreement by changing a standard term of the tenancy agreement, in violation of section 14 (1) of the Act. I note that the Landlord also breached section 49 of the Act by not providing the Tenant with the required notification that the Landlord was changing or ending the verbal tenancy for the Landlord's family member to use the property.

The Tenant and male Landlord later entered into a verbal tenancy agreement which was to be effective September 1, 2009 which included previous verbal agreement that certain renovations were to be completed prior to the commencement of the tenancy.

I note that the Landlords contradicted their own testimony by first stating that they did not agree to have all the renovations completed prior to the tenancy agreement and later stated that they postponed the beginning of the tenancy by one month because they could not finish the renovations in time and then advised that the male Landlord could not complete the renovations because he was out of town to attend to a family illness. In the presence of the contradictory testimony and the supporting testimony of the Tenant's witness, I find that on a balance of probabilities the agreement between the male Landlord and Tenant was based on the renovations and internet connection being completed prior to the onset of the tenancy. The Landlords breached the tenancy agreement when the Landlords failed to complete the renovations and have the internet connected prior to September 1, 2009.

Based on the above I find that the Tenant has proven the test for damage or loss as listed above and I approve her monetary claim for the return of her security deposit and rent paid for September 2009.

The Tenant has been successful with her claim therefore I award the Tenant recovery of the \$50.00 filing fee.

**Monetary Order** – I find that Tenant is entitled to a monetary claim as follows:

Refund Security Deposit plus Interest of \$0.00	\$525.00
Return of September 1, 2009 Rent	1,050.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$1,625.00</b>

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$1,625.00. 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: January 14, 2010.

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Dispute Resolution Officer