

## **DECISION**

Dispute Codes      MNR MND FF  
                             MNDC MNSD FF

### **Introduction**

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

The Landlord filed seeking a Monetary Order for unpaid utilities, damage to the unit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit, compensation for loss under the Act, and to recover the cost of the filing fee from the Landlord.

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 approximately September 24, 2009. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenant to the female Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on October 1, 2009. The Canada Post tracking number was provided in the Tenant's evidence listing the female Landlord's name. Based on the written submissions of the Tenant, I find that the female Landlord has been served with the Dispute Resolution Proceeding documents.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Tenant has applied for a monetary Order which requires that the Tenant serve **each** respondent Landlord as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Landlords has been personally served with the Notice of Dispute Resolution Proceeding document. Therefore, I find that the request for a monetary Order against both Landlords must be amended to include only the female

Landlord who has been properly served with Notice of this Proceeding. As the second Landlord has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Male Landlord is dismissed without leave to reapply.

The Tenant and the female Landlord appeared, 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 Landlord proven entitlement to Orders under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Has the Tenant proven entitlement to Orders under sections 38, 51(2), 67, and 72 of the *Residential Tenancy Act*?

#### Background and Evidence

The undisputed testimony included that the fixed term tenancy began on May 1, 2009 and would switch to a month to month tenancy after October 31, 2009; rent was payable on the first of each month in the amount of \$1,600.00; the Tenant paid a security deposit of \$800.00 on May 1, 2009; the Tenant was responsible for paying 50% of the hydro bills and 75% of the natural gas bills.

The Landlord testified that she issued the Tenant a 2 Month Notice to End Tenancy for Landlord's use and served the notice personally to the Tenant on August 1, 2009 at the rental unit at the same time she attended to pick up the rent however the Tenant did not have the rent money. The Landlord argued that her grandmother and aunt were going to move into the rental unit.

The Landlord stated that when she attended the rental unit on August 2, 2009 to pick up the rent the locks to the rental unit were broken and the house was "trashed".

The Landlord testified that she returned to the rental unit on August 4, 2009 and served the Tenant with a 1 Month Notice to End Tenancy for Cause.

The Landlord stated that she received a notice of dispute resolution filed by the Tenant on August 10, 2009 so decided to negotiate a settlement with the Tenant, in writing, whereby the tenancy would end and the Landlord would provide the Tenant with a cheque for the one month of rent compensation. The Landlord argued that the Tenant cashed the \$1600.00 compensation but did not sign the agreement, a copy of which is in the Landlord's evidence.

The Landlord is seeking compensation for the outstanding hydro bill of \$275.00, natural gas of \$53.00, plus \$104.34 to repair the locks.

In reviewing the locksmith invoice submitted into evidence by the Landlord, the Landlord confirmed that the locksmith rekeyed the locks and charged a service call to do so.

The Tenant confirmed that he received the 1 Month and 2 Month notices to end tenancy as described by the Landlord however he did not agree to allow the Landlord to keep his security deposit and he is claim for the return of the security deposit.

The Tenant confirmed that the Landlord was not provided with the Tenant's forwarding address, in writing, until attendance at the dispute resolution hearing on September 24, 2009.

The Tenant testified that he is seeking compensation equivalent to two month's rent because the Landlord did not move her family into the unit.

The Landlord confirmed that the rental unit was rented to non-family members as of

September 20, 2009. When asked how she advertised the rental unit the Landlord stated that it was through word of mouth through her church.

### 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

### **Landlord's Application**

After careful review of the evidence I find that the Tenant is responsible to pay for 50 % of the hydro costs and 75% of the natural gas costs during the period of the tenancy. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby award the Landlord \$51.90 for natural gas costs (\$19.26 + \$32.64) and \$278.07 for hydro costs (\$175.50 + \$102.57).

The Landlord is seeking \$104.34 as costs that she initially stated were related to the repair of the rental unit locks then later confirmed that the charges were for the rekeying of the locks. Section 25 of the Act provides that a landlord must pay all costs associated with rekeying locks at the end of the existing tenancy or onset of the new tenancy. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss the Landlord's claim of \$104.34.

As the Landlord has been partially successful with her claim I hereby award her recovery of the \$50.00 filing fee.

Landlord's Monetary Claim – I find that the Landlord is entitled to a monetary claim from the Tenant as follows:

Unpaid hydro utilities (\$175.50 + \$102.57)	278.07
Unpaid natural gas utilities (\$19.26 + \$32.64)	51.90
Filing fee	50.00
<b>Subtotal (Monetary Order in favor of the Landlord)</b>	<b>\$379.97</b>

### **Tenant's Application**

Upon review of the 2 Month Notice to End Tenancy for Landlord's Use I find that the Landlord served the Notice in accordance with sections 89 of the Act and the Landlord provided the Tenant with compensation equal to one month's rent, in accordance with section 51(1).

The Landlord provided affirmed testimony that they did not use the rental unit for the stated purposed for ending the tenancy as required under section 49 of the Act. Based on the aforementioned I find that the Tenant has proven the test for damage or loss and as a result the Tenant is entitled to receive additional compensation equal to two month's rent pursuant to section 51(2) of the Act.

The evidence supports that the Tenant did not provide the Landlord his forwarding address, in writing, until September 24, 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 return the Tenant's security deposit or file for dispute resolution no later than October 9, 2009. The Landlord filed application for dispute resolution on September 24, 2009.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and that the Landlord is not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security deposit.

Based on the above, I find that the Tenant has not proven entitlement to return of double his security deposit and as a result the Tenant is only entitled to return of the original security deposit plus interest less any claims awarded to the Landlord.

As the Tenant has been partially successful with his application I hereby award recovery of the \$50.00 filing fee.

Tenant's Monetary Claim – I find that the Tenant is entitled to a monetary claim from the Landlords as follows:

Compensation for ending tenancy for different purpose (2 x \$1,600.00)	\$3,200.00
Security Deposit \$800.00 plus Interest of \$0.00 from May 1, 2009	800.00
Filing fee	50.00
<b>Subtotal (Monetary Order in favor of the Tenant)</b>	<b>\$4,050.00</b>

**Off-Set Monetary Claims – Cross Applications** – These claims meet the criteria under section 72(1) of the *Act* to be offset against each other's claims as follows:

Monetary Order in favor of the Tenant	\$4,050.00
Less Monetary Order in favor of the Landlord	-379.97
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$3,670.03</b>

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$3,670.03**. 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 25, 2010.

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Dispute Resolution Officer