

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order and the tenant has applied for a monetary order.

The first hearing was conducted via teleconference on January 25, 2010 and was attended by the landlord and the tenant. At this hearing the tenant indicated that she had not received any of the landlord's evidence.

The landlord had provided testimony that the documents had been served on October 27, 2009. However, the parties agreed to an adjournment to facilitate re-service of documents. I allowed both parties to submit any additional evidence prior to the next hearing.

The hearing was re-scheduled for March 11, 2010, however due to my unavailability it had to be rescheduled to March 26, 2010.

The hearing on March 26, 2010 was also conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing on March 26, 2010 the tenant indicated that she had not received all the evidence from the landlord, she stated she did not receive the package with the landlord's cell phone log and travel itinerary. The landlord provided confirmation of registered mail receipts. I am satisfied all evidence has been served appropriately.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for compensation for damages or loss under the *Act*; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenant is entitled to a monetary order for the return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of two Returned Item Notices from the landlord's bank showing two cheques in the amount of \$1,300.00, one deposited on September 1, 2009 and one on October 9, 2009, were returned as non-sufficient funds ;
- A summary of the landlord's damages claim in the amount of \$3,275.93 for two months of unpaid rent; removal of abandoned items and garbage; and insurance deductible for repairs from flood attributed to the tenant;
- A receipt from a hauling and recycling contractor for clean up, dump and recycling fees for the rental unit;
- A copy of a letter dated September 14, 2009 from the landlord's insurance broker regarding water damage, the deductible and the insurance broker's notice that they will be pursuing the responsible party for claim expenses;
- 3 photographs of furniture and garbage bags outside of a residence;
- A copy of a letter dated September 11, 2009 from a neighbour from the basement of the property complaining about the tenant's behaviour throughout the tenancy and in particular spoke about a flood that was caused when the tenant left her kitchen sink to be filled with water when she took a shower;
- A copy of the landlord's Contact Notes for the tenant dating from July 3, 2008 to March 11, 2010;
- Copies of non-sufficient fund stamped cheques from the tenant dated April 1, 2009 and May 1, 2009 in the amount of \$1,300.00;
- 4 letters with character references for the landlord dated from March of 2010;
- Confirmation of the landlord's flight itinerary for flights from Seattle to Las Vegas on Friday September 4, 2009 and returned on Monday September 7, 2009 as well as flights from Victoria to Seattle on Thursday September 3, 2009 and return on Monday September 7, 2009; and
- 36 pages of cell phone call usage on the landlord's account dating from July 18, 2009 to September 17, 2009.

The tenant has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on July 6, 2008 for a 1 year fixed term tenancy that began on August 1, 2008 and converted to a month to month tenancy on July 31, 2009 for a monthly rent of \$1,300.00 due on the 1<sup>st</sup> of the month with a security deposit of \$650.00 paid on July 29, 2008;
- A copy of a handwritten note dated September 8, 2009 from the tenant requesting her security deposit and providing her forwarding address;
- A copy of a receipt dated July 8, 2008 for \$1,300.00 for August 2009 rent;
- A copy of a receipt dated July 8, 2008 for \$650.00 for a deposit;
- A copy of a Condition Inspection Report showing completion of a move in inspection on July 29, 2008 but unsigned by the landlord and signed by the tenant on September 8, 2009 with her forwarding address but unsigned by the landlord;
- 4 letters from the tenant's witnesses regarding various aspects of the tenancy and the ending of the tenancy;

- Copies of the tenant's financial institution statements and negotiated cheques ranging in date from April 1, 2009 to October 8, 2009; and
- A copy of a Stop Payment dated October 8, 2009 for an undated cheque in the amount of \$1,300.00 with no payee listed.

The tenant provided supporting documents from several people confirming that she called the landlord on July 29, 2009 to give verbal notice that she would be moving out. She indicated that she had asked where to send a written notice but the call ended and she got no response from the landlord. The tenant testified that she did not send a written notice to end the tenancy.

The parties confirmed that they completed a walk through at the end of the tenancy but the landlord did not complete a Condition Inspection Report, however the tenant did sign a Report that only showed the condition at the start of the tenancy.

The tenant disputes the landlord's claim regarding the removal of garbage from the lower level. The tenant testified that this belonged to the tenant in the basement rental unit. The landlord agreed to remove this item from his claim.

The tenant testified that she had left a tap running which caused some spillage and that this resulted in some restoration activity in the rental unit. The landlord is claiming the deductible he had to pay to his insurance company. The tenant does not dispute her responsibility for this issue.

The landlord testified that he rented out the rental unit effective November 1, 2009 after advertising on Craig's List and an alternate local website.

### Analysis

Section 45 of the *Act* allows a tenant to end a month to month 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. It must also be the day before the day in the month, that rent is payable. The notice itself must comply with Section 52.

Section 52 states that in order to be effective a notice to end a tenancy must be in writing and be signed and dated by the tenant giving the notice; give the address of the rental unit and state the effective date of the notice. The tenant has failed to provide the landlord with notice to end the tenancy as required by Section 52.

As the tenant failed to give compliant notice to end the tenancy, I find that landlord did not receive notice that the tenant had decided to end the tenancy until September 3, 2009 when she called him to complete a move out inspection. As a result and in compliance with Section 45 of the *Act*, I find the effective date of the tenancy to be October 31, 2009.

Section 38 states a landlord must return a security deposit or file an application for dispute resolution within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing.

As per my finding above the landlord had 15 days from the end of the tenancy to file his application for dispute resolution on October 26, 2009 and has therefore been compliant with Section 38. I therefore dismiss the tenant's application for return of double the amount of her security deposit.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,150.00** comprised of \$2,600.00 rent owed; \$500.00 for flood damage and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,500.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: March 29, 2010.

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Dispute Resolution Officer