

## **DECISION**

Dispute Codes            MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulation or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the forwarding address provided by the tenant on January 15, 2010. The tenant states that he did not receive the complete hearing package which the landlord stated they had sent. The tenant stated that he still wanted the hearing to continue as the evidence he stated he had not received were documents he had already had sight of.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to money owed or compensation for damage or loss?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

This fixed term tenancy started on March 01, 2009 with an expiry date of February 28, 2010. The rent for this unit was \$1,250.00 per month and was due on the first of each month. The tenant paid a security deposit of \$625.00 on January 30, 2009.

The landlord testifies that the tenant gave notice to end the tenancy in writing dated December 10, 2009 with an effective date to end tenancy of December 31, 2009. The landlord states that the tenancy agreement specifies that a tenant must give a least one months notice on a date that is the day before the day that rent is due. The tenancy agreement also states that if a tenant elects to end the tenancy before the end of the fixed term then liquidated damages of \$300.00 will be charged to the tenant.

The landlord claims the tenant did not clean the carpets at the end of the tenancy and have charged the tenant \$75.00 to have the carpets cleaned. The tenant signed an agreement allowing the landlord to deduct the cost of carpet cleaning. He also agreed that the landlord could deduct \$300.00 for breaking the lease from the security deposit. The tenant did not agree to pay the final month's rent.

The tenant testifies that he had complained to the landlord about noise issues from the rental unit above his. He states that the landlord did not take action to resolve this issue or move the tenant to another rental unit. The tenant also claims that the heating broke down at least five times and the building was in a state of disrepair. The tenant feels he acted in a responsible manner by giving the landlord notice to end the tenancy. The tenant also feels that he acted responsibly by agreeing that the landlord could keep his security deposit in light of the landlords' inability to resolve his issues with his rental unit. The tenant feels the landlord has breached the tenancy agreement by not providing him with adequate heating or in protecting his right to quiet enjoyment.

### Analysis

I find that tenant did not provide written notice to end the tenancy on the day before the day in the month that rent is due as agreed in the tenancy agreement and as stated under section 45(1)(b) of the *Act*. As rent is due on the first day of each month the latest the tenant should

have given the landlord notice to end the tenancy should have been November 30, 2009, consequently the landlord is entitled to recover **\$1,250.00** in rent for January, 2010 pursuant to s.67 of the *Act*. I also find the tenant agreed to pay the landlord **\$300.00** in liquidated damages because he broke the lease before the end of the fixed term and agreed the landlord may retain this amount from his security deposit pursuant to section 38 (4)(a) of the *Act*.

I find the tenant agreed the landlord may deduct the amount for cleaning the carpets from his security deposit. Consequently, I find the tenant did agree that the landlord may keep **\$75.00** from the his security deposit pursuant to section 38 (4)(a) of the *Act*.

I Order the landlord to keep the tenants security deposit of \$625.00 in partial satisfaction of their claim of \$1,675.00 pursuant to section 38(4)(b) of the *Act*. As the landlord has been successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Outstanding rent for January, 2010	\$1,250.00
Carpet cleaning	\$75.00
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$1,675.00</b>
Less security deposit	(-\$625.00)
<b>Total amount due to the landlord</b>	<b>\$1,050.00</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 **\$1,050.00**. The order must be served on the respondent 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: March 17, 2010.

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Dispute Resolution Officer