

## **DECISION**

**Dispute Codes**      MND, MNSD, FF

### **Introduction**

This hearing was convened by conference call to deal with the landlord's application for a monetary order for damages to the rental unit and an order to retain the security deposit in satisfaction of the claim. Despite being served with the application for dispute resolution personally on December 5, 2009, the tenant did not attend the conference call hearing.

### **Issues(s) to be Decided**

Is the landlord entitled to a claim for damages?

Is the landlord entitled to retain the security deposit in satisfaction of the claim?

### **Background and Evidence**

This month-to-month tenancy began on July 1, 2007. Rent in the amount of \$500.00 per month is due on the 1<sup>st</sup> day of each month. The tenant also paid a security deposit in the amount of \$250.00 on June 18, 2007. A copy of the tenancy agreement was provided in advance of the hearing, but no other evidence was provided by the landlord. There was no inspection-in report completed, and no inspection-out report. The tenant vacated the unit on August 1, 2009. The landlord testified that she attempted to contact the tenant by cell phone on one occasion, but the tenant failed to answer.

The landlord also testified that a previous hearing with a Dispute Resolution Officer under file no 741315 was held on November 24, 2009, which is where and when the landlord received the tenant's forwarding address.

The landlord testified that the tenant caused damage to the unit by smoking indoors. Further, the tenant had a dog without permission, and the dog attacked the postman, and mail for the entire block was not delivered due to the dog incident.

The landlord further testified that when the tenant vacated the unit, the fridge was very mouldy, and in such bad condition that it had to be replaced. When questioned about the age of the fridge, the landlord replied that it was about 4 years old, however, provided no evidence of that.

The landlord testified that she told the tenant that she would not be at home when she was to return the keys to the unit at the end of the tenancy, and asked her to leave the keys with the landlord's sister. The tenant instead sent her daughter to exchange the keys for the security deposit, and the daughter would not leave the keys because the landlord's sister did not have the security deposit to return to her.

### **Analysis**

The tenancy agreement states nothing about smoking inside the unit. For that allegation, I find that the landlord has failed to prove any damage in relation to smoking indoors.

Further, the tenancy agreement states nothing about pets, and I find that the landlord has failed to prove that any damage occurred with respect to the dog, or that if any damage was claimed for the dog, the landlord failed to prove such damages.

The landlord did not complete an Inspection-in report or an Inspection-out report. The *Residential Tenancy Act* states:

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

The landlord clearly did not comply with subsection (2), and therefore cannot be rewarded for the breach of the *Act*, and is therefore not entitled to retain the security deposit. Further, the landlord has not sufficiently proven any damages to the unit.

### **Conclusion**

The landlord's application is dismissed without leave to reapply. I order that the landlord return the security deposit and interest in the amount of \$255.80 to the tenant forthwith.

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: April 06, 2010.

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Dispute Resolution Officer