

## **DECISION**

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of costs of emergency repairs withheld by the Landlord and to recover the cost of the filing fee from the Landlord for the cost of this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant 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.

### Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order for the cost of emergency repairs pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the fixed term tenancy began on April 1, 2008 and switched over to a month to month tenancy after September 30, 2008. The monthly rent was payable in the amount of \$1,350.00 and the Tenants paid a security deposit of \$675.00 on March 9, 2008. The Tenants paid the full monthly rent for September 2009 and vacated the rental unit by September 25, 2009. The Landlord did not complete move-in or move-out inspection forms however the two parties did conduct a walk through the rental unit on September 25, 2009 when the Tenants returned the keys and possession of the unit to the Landlord. The Tenants provided the Landlord with their forwarding address, in writing via e-mail, on October 6, 2009.

The Tenant testified that they received two cheques from the Landlord as partial return of their security deposit one dated October 29, 2009 for \$187.68 and the other dated for November 9, 2009, in the amount of \$100.00. The Tenant stated that neither cheque has been cashed; pending the outcome of today's hearing and that they are seeking the return of the balance of their security deposit.

Both parties confirmed that the Tenants were responsible to pay hydro and natural gas charges for the total amount of \$87.32 which consists of \$17.40 natural gas, \$49.45 natural gas, and \$20.47 for hydro.

The Landlord testified that she retained the additional \$300.00 from the security deposit to pay towards the plumbing costs incurred to repair the plumbing system during the evening of September 24, 2009, the night before the Tenants vacated the rental unit. The Landlord argued the plumbing system that was damaged operates the rental unit plumbing and not the upstairs plumbing that the damage had to have been caused by the Tenants. The Landlord confirmed that she has not applied for dispute resolution for damages, that she does not possess an Order allowing her to retain money from the security deposit, and the Landlord does not have the Tenant's written permission to withhold money from the security deposit.

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicants pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenants bear the burden of proof.

In this case the Landlords issued the Tenant two separate cheques totalling \$287.68, all of which were received by the Tenants prior to the date the Tenants sent their application for dispute resolution to the Landlords via registered mail. A balance of \$387.32 was retained by the Landlord, \$87.32 for utilities in agreement by the Tenants and \$300.00 for plumbing costs which were not previously agreed upon by the Tenants.

The Landlord has confirmed that she did not apply for dispute resolution to keep the \$300.00 from the security deposit, does not have an Order allowing her to keep the \$300.00, and she does not have the Tenants' written consent to retain \$300.00 from the security deposit.

The evidence supports that the Tenants provided the Landlords with their forwarding address on October 6, 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 Tenants' security deposit in full or file for dispute resolution no later than October 21, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now 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 deposit and the landlord must pay the tenant double the amount retain from security deposit. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double the balance owed of their security deposit, plus interest, in accordance with section 38 of the *Act* and #17 of the *Residential Tenancy Branch Policy Guidelines*.

The Tenants currently hold two cheques issued by the Landlord which are dated five months prior to today's date and may be considered stale dated and non-negotiable. Therefore I hereby order the Tenants to destroy the two cheques issued by the Landlord dated October 29, 2009 for \$187.68 and November 9, 2009 for \$100.00 and will included these amounts in the Tenants' monetary award.

I find that the Tenants have succeeded with their application, therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim as follows:

Replace refund cheque issued by Landlord October 29, 2009	\$187.68
Replace refund cheque issued by Landlord November 9, 2009	100.00
Doubled Balance owed on Security Deposit 2 x \$300.00	600.00
Interest owed on full security deposit from March 9, 2008 to October 29, 2009	8.24
Interest owed on partial security deposit of \$400.00 from October 30, 2009 to November 9, 2009	0.00
Interest owed on partial security deposit of \$300.00 from November 10, 2009 to April 19, 2010	0.00
Filing Fee	50.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$945.92</b>

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenants' alleged failure to comply with the *Act* or agreement. Even if the Tenants were found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a Landlord.

In regards to the Landlords claims relating to loss that they may have suffered, I am not able to neither hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenants' application. That being said, I must point out that the Landlord is at liberty to make a separate application for dispute resolution and to resubmit their evidence.

### Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$945.92**. 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: April 19, 2010.

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Dispute Resolution Officer