

## **DECISION**

Dispute Codes      MNSD, MNDC, FF, SS

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing I questioned the landlord as to why the application included a request to serve documents or evidence in a different way than required by the Act. The landlord was uncertain as the application was completed by the building manager who was not in attendance at the hearing.

The tenant confirmed that he was served the Notice of Hearing documents at his place of work and that that had been the forwarding address provided by the tenant to the landlord at the end of the tenancy. I find the landlord served the tenant in compliance with the Act and there is no requirement for substitute service, and therefore amend the landlord's application to exclude the issue of substitute service.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant 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 tenancy began on July 1, 2008 as a month to month tenancy for a monthly rent of \$750.00 due on the 1<sup>st</sup> of the month with a security deposit of \$367.50 was paid on July 1, 2008. The tenancy ended on November 30, 2009.

The landlord submitted into evidence the following documents:

- A copy of a security deposit interest calculation for the tenant's security deposit received on July 1, 2008;
- A copy of a receipt dated December 6, 2009 for photographic development in the amount of \$20.00;
- A copy of a receipt from a cleaning contractor, in the amount of \$493.00. The receipt does not indicate an address nor a date that the cleaning was completed;
- A copy of a Condition Inspection Report listing both the move in and move out condition of the rental unit. The tenant and the landlord both signed the move in

details but the landlord has noted on the report that the tenant left without inspection or cleaning of apartment; and

- 45 photographs of the rental unit.

The tenant has submitted the following documents into evidence:

- A summary of issues from the tenant's perspective including specific responses to issues and photographs submitted by the landlord; and
- A copy of a "Checklist for Your Moving Day" that indicates tenants who fail to complete the tasks on the check list will be required to pay a minimum of \$75.00 plus an additional cleaning charge of \$15.00 per hour and that these charges will be deducted from the damage deposit.

The landlord clarified in the hearing that although he had provided substantial photographic evidence of some damage to the rental unit the entire monetary claim was based on the receipt for cleaning submitted in the amount of \$493.00 and \$20.00 for photographs for this hearing and no financial claim for repairs.

The landlord confirmed in the hearing that tenants in the residential property are provided with the checklist as submitted by the tenant prior to the end of a tenancy. He also confirms that the document stipulates that a fee of \$15.00 per hour will be charged to tenants who fail to complete the tasks on the checklist (cleaning, etc).

The tenant testified that he did not do any cleaning at all as he felt that the landlord intended to keep the entire security deposit regardless of the condition he had left the rental unit. For the same reason he did not attend the move out condition inspection walk through with the landlord.

### Analysis

As the tenant confirmed in his testimony that he had not cleaned any of the rental unit at the end of the tenancy I find the landlord is entitled to compensation for cleaning the rental unit. However, I am not convinced the landlord is entitled to the full amount claimed.

While the landlord has submitted a receipt in the amount of \$493.00 for cleaning based on 2 cleaners for 8 ½ hours of cleaning at \$58.00 per hour or an equivalent of \$29.00 per hour for 1 cleaner for 17 hours, the landlord informed the tenant prior to the end of the tenancy that cleaning charges would be \$15.00 per hour.

If in fact the cleaning did take 17 hours at \$15.00 per hour the total amount for cleaning would be \$255.00. This amount is nearly half of what the landlord is claiming. I find that it would be unfair to the tenant to charge him nearly double the amount or \$29.00 per hour when the landlord committed to \$15.00 per hour.

The checklist also noted a minimum fee of \$75.00 should the tenant fail to complete the listed tasks. I find this term of the notice to be unreasonable and certainly not an agreed to term of

the tenancy agreement and therefore not enforceable. As such, I find the landlord is entitled to \$255.00 for cleaning for this rental unit.

Although the landlord has submitted evidence of some minor damages to the rental unit the landlord has not made any financial claim for these damages, I dismiss this portion of the landlord's claim.

Despite the tenant's testimony that he was not willing to participate in a condition inspection at the end of the tenancy, the landlord is required under Section 35 of the Act to offer the tenant at least 2 opportunities to participate in an inspection. In addition Section 17 of the Residential Tenancy Regulation requires that the landlord has provided the second notice must be in writing and in the approved form.

As the landlord did not provided written notice to the tenant, I find the tenant has not extinguished his right to the return of the security deposit.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$255.00** for cleaning the rental unit. I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$370.27 in satisfaction of this claim.

As the landlord was not completely successful in his application, I dismiss the landlord's claim for compensation for the preparation of photographic evidence and to recover the filing fee for this application.

I find the landlord must return the balance of the security deposit plus interest held, in the amount of \$115.27, within 15 days of receipt of this decision. Should the landlord fail to comply with this order the tenant is at liberty to make an Application for Dispute Resolution to have the landlord comply with this order.

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 21, 2010.

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Dispute Resolution Officer