

## **DECISION**

### **Dispute Codes**

For the tenant – MNSD, OLC, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for the return of double her security deposit and to recover her filing fee. The tenant also seeks an Order for the landlord to comply with the *Act*, regulations or tenancy agreement. The landlords seek a Monetary Order for damages, unpaid utilities, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee. The landlord's also seek to keep the security deposit.

The tenant served the landlord by registered mail on January 25, 2010 with a copy of the application and a Notice of the Hearing. The landlords served the tenant by registered mail April 08, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

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

- Is the tenant entitled to double her security deposit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Are the landlords entitled to a Monetary Order for damage to the carpets and floor?
- Are the landlords entitled to a Monetary Order for unpaid utilities?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security deposit?

### Background and Evidence

This tenancy started on August 15, 2009. This was a six month fixed term tenancy and the tenant moved from the property on January 04, 2010. Rent for this property was \$900.00 which was due on the first of each month. The tenant paid a security deposit of \$450.00 on August 01, 2009. The tenant gave the landlords her forwarding address in writing on January 05, 2010. No Move in or Move out condition inspections were carried out.

### The tenants' application

The tenant claims the return of her security deposit. She testifies that she gave the landlords her forwarding address in writing by e-mail on January 05, 2010. The tenant claims that the landlords did not return her security deposit to her or make an application to keep it within the 15 days allowed under the Act. Due to this the tenant states she is entitled to double her security deposit to an amount of \$900.00.

The tenant testifies that the landlords have not complied with the *Act* and did not carry out a move in or move out condition inspection with her at the start and end of the tenancy. The tenant seeks an Order for the landlord to comply with the *Act*.

The tenant seeks to recover the \$50.00 filing fee paid for her application.

The landlords dispute the tenants' testimony. The landlords testify that when the tenant came to view the property they walked through it together and she had friends come over to view it with her. The landlords testify that they took a number of photographs on the day the tenant moved in and state that if the tenant had noticed any damage she should have told them about it. The landlords claim the new tenant took photographs of the carpet when she moved in and these show the damage this tenant caused.

### The landlord's application

The landlord's state that the tenants' cat has caused damage to the carpet in the living room and on the stairs; The landlords referred to their photographic evidence which shows photos of the carpets at the start and end of the tenancy. The landlords claim the carpets were 22 years old but in good condition. The landlords claim the tenants cat has made pulls on an area of the carpet approximately 10' X 2'. The landlords also claim the tenant has caused a burn mark on the carpet close to the fire which was not there at the start of the tenancy. The landlords have provided an estimate to have the carpet replaced at a cost of \$1,503.77; however due to depreciation the landlords seek 50% of this cost from the tenants to a sum of \$751.88.

The landlords also testify that the tenant caused damage to a wood floor from the metal legs of a chair. The cost to have this repaired was \$100.00. The landlords agreed with the tenant that they would pay \$60.00 of this cost and she would pay \$40.00.

The tenant disputes the landlord's testimony about the damage to the carpet. The tenant states that the pulls on the carpet were there at the start of her tenancy and the landlords had a piece of spare carpet covering these marks. The tenant also claims the photographs the landlords have provided are shot at a different angle which does not clearly show the condition of the carpet at the start of the tenancy. The tenant claims the marks on the carpet around the fire place were also there when she moved in and the landlord's photographs confirm this.

The tenant does not dispute the landlord's testimony that she agreed to pay \$40.00 towards the cost of repair to the wooden floor. However the tenant testifies that she gave the female landlord this amount in cash on the day she moved out and the landlord's memory of events has not been good.

The landlord's testify, the tenant was aware that her cat caused the damage to the carpet and they had a discussion about it in December, 2009. The landlords claim that although the carpet was old, it was in pristine condition. The landlords claim that the piece of carpet the tenant refers to that she claims was covering the pulls is only 14" X 16" and therefore could not have hidden this damage at the start of her tenancy due to the area the damage covered.

The landlord claims the tenant owes \$241.95 for utilities. The tenant does not dispute this amount and has agreed to pay this to the landlord. The landlord's accounts were difficult to understand but were deciphered during the hearing.

The landlords testify that they made an exception to their 'no pet rule' as the tenant had a cat, as long as the tenant paid a pet damage deposit of \$300.00. However, the landlords claim the tenant could not afford this amount at the start of the tenancy and they state they agreed she could pay it later. The landlords claim the tenant never paid this deposit throughout her tenancy and they have adjusted their claim to take account of this as this sum was deducted when they made their claim. Therefore, the total amount the landlords are claiming is now \$933.88.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regard to the tenants claim for double the security deposit. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing on January 05, 2010. As a result, the landlords had until January 20, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the tenants security deposit and did not make an application to keep it until April 08, 2010. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlords must pay the tenant double the amount of the security deposit to a sum of **\$900.00**. No interest has accrued on security deposits in 2009 or 2010.

With regard to the tenants' application for an Order for the landlord to comply with the *Act* as the tenant has already moved from the rental property any Order would be irreverent at this time and therefore this section of the tenants claim is dismissed.

With regards to the landlords claim for a Monetary Order for damage to the carpet and floor; Sections 23 and 35 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and

provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this instance the burden of proof is on the landlords to prove the damage to the carpet and floor was done by the tenant or her cat during her tenancy. I find the landlord's have not met this burden of proof and their evidence is insufficient to support their claim that the tenant was responsible for the damage to the carpet. The tenant did not dispute the damage to the wooden floor however she states that the agreed amount of \$40.00 was given to the landlord on the day she moved out. However, I find the tenant has provided no evidence to support this claim and therefore I find the landlords are entitled to recover the amount of **\$40.00** from the tenant.

With regard to the landlords claim for unpaid utilities; the tenant does not dispute that she owes utilities and was waiting for the landlord to explain their accounting. Therefore, as the landlords accounting has been explained during the hearing I find the landlords are entitled to a monetary award to the sum of **\$241.95** for unpaid utilities.

With regards to the landlords claim to keep the tenants security deposit; Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to

keep **\$281.95** from the Tenants' security deposit to compensate them for the damage to the floor and for the unpaid utilities.

With regards to the landlords claim for \$300.00 for the pet damage deposit; Section 20(c)(i) of the *Act* states that a landlord must not require a pet damage deposit at any time other than when the landlord and tenant enter into the tenancy agreement. As the landlord and tenant both agreed that the amount of \$300.00 was due as a pet damage deposit and this amount was not paid a landlord should have taken the necessary action against the tenant at that time and cannot now make this part of their claim for money owed or compensation for damage or loss under the *Act*. Consequently, this section of the landlords claim is dismissed.

As both Parties have been partially successful with their claim I find they must both bear the cost of filing their own application.

A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$900.00
Less amount owed for utilities	(-\$281.95)
<b>Total amount due to the tenant</b>	<b>\$578.05</b>

### Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$578.05**. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

I HEREBY ORDER the landlord to retain \$281.95 from the tenants' security deposit as detailed above.

The remainder of the landlord's application is dismissed without leave to reapply.

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 20, 2010.

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Dispute Resolution Officer