

## **DECISION**

Dispute Codes            MNSD, (MNDC)

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to recover double the security deposit and for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement.

The tenant served the landlord in person on January 28, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was 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 witnesses, 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 recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage under the *Act*?

### Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2008. Rent for this property was \$1,250.00 per month and was due on the 31<sup>st</sup> of each month. The tenant paid a security deposit of \$625.00 on September 01, 2010. Both Parties also agree that there was a verbal agreement at the start of the tenancy and this was put into a written agreement by the request of the tenant on September 21, 2009. No Move in or move out condition inspections were completed and the tenancy ended on December 31, 2009. The tenant sent her forwarding

address to the landlord by registered mail on January 05, 2010. The landlord confirmed receipt of this.

The tenant testifies that the landlord did not return her security deposit after 15 days of receiving her forwarding address in writing. The tenant disputes the landlords' claims concerning unpaid utilities and any cleaning or damages left at the rental unit.

The landlord testifies that he did not return the tenants security deposit because the tenant had left some unpaid utilities had left some mess at the rental unit and removed energy efficient bulbs. The landlord states the carpets had to be removed and replaced as they smelt of cat urine and a glass lamp was left broken. The landlord testifies that he was unaware that he had to make an application to keep the security deposit.

The tenant seeks compensation of \$1,000.00 for a loss of quiet enjoyment of the rental unit. The tenant claims the landlord had a horse on his property which was often left to roam around the property and as her yard was unfenced the horse was able to access this area also. The horse became a daily stress for herself, her children and her guests. The horse was also a threat to her families' personal safety as it would approach them and push at them. On one occasion the horse tried to bite one of the tenants' guests and the tenants' son while it was in its pen. The tenant testifies that her children did ride the horse and petted it.

The tenant testifies that the landlord had a dog which was left to run free around both properties. This dog was also a nuisance to the tenant, her family and guests. The dog would approach them with a stick wanting to play. The tenant testifies that they did play with the dog and throw its stick for it. The tenant testifies that the dog would bark at the horse which caused it to gallop around the property.

The tenants written submissions also state that the landlord had chickens which were not kept in a coop and caused a health risk to the tenants family.

The landlord testifies that when the tenant rented the property she told him how she loved country life and was aware that her yard would not be fenced in and that the landlord kept chickens, a horse and had a dog. The landlord claims the tenant and her children fed the chickens and this encouraged them to come on to the tenants' poach. The tenant and her family

also played with his dog and petted the horse. The dog and horse were friendly and would keep coming back for attention.

The tenant called her witness. This witness testifies that on one occasion as she was getting out of her car the horse approached her and pushed at her. She pushed the horse back but it did not respond. This witness testifies that she only saw the horse in its fenced area on two occasions and the remainder of the time when she visited it was running loose in the tenants' personal yard space. This witness testifies that the tenant warned her about not letting her dog out in the yard when she came to visit. On one occasion the witness claims her dog did get out of the house when it followed her to her car. She claims her dog was attacked by the landlords' dog that bit her dog on its hind-quarters. When she returned to the house the tenant said "see I told you not to let your dog out".

The landlord questioned this witness and asked if she informed him of this incident after it had happened. The witness states that she had not as the landlord was not around at the time.

The tenant called her second witness. This witness testifies that the horse ran around the yard and he was scared it would trample one of the tenants children. This witness claims the horse tried to bite him when it was in its pen. The horse would come into the tenants' garden area and eat things from the garden. He claims he was scared of the horse. This witness also claims he fed the horse with the tenants' children when it was in its pen. This witness testifies that he often saw the landlords' dog running free on the property when the landlord was not at home. He also states that when the landlord was home he asked him to put the dog in his house and the landlord complied. The witness testifies that he did play with the dog and throw a stick for it, this was to try to get the dog to go away but it kept coming back.

The landlord declined to question this witness.

The tenant states she lived with a daily stress in dealing with the horse and dog and this effected her quiet enjoyment of her property and was emotionally upsetting. The tenant also states that she never complained to the landlord in writing but was unhappy since the day she moved into the property.

The landlord states the tenant and her family played with the horse and dog and this encouraged the animals to come into the tenants' yard space. The tenants' children also played with the chickens, fed them and collected the eggs. The landlord states that this is country living and the tenant was aware of this when she moved in. The Society for the Prevention of Cruelty to Animals (SPCA) visited his property they said the horse was being well cared for.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. Sections 23(4), 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.

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)(b) 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 by January 10, 2010 (the 5<sup>th</sup> day after it was mailed). As a result, the landlord had until January 25, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and has not made a claim to keep it. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenant double the amount of her security deposit to the sum of **\$1,250.00** plus interest accrued on the original amount of **\$3.12**.

With regard to the tenants' claim of \$1,000.00 in compensation for a loss of quiet enjoyment, I have considered the tenants application and the evidence presented. I find the tenant was aware that the landlord had a horse, a dog and chickens on the property when she first moved in and while I accept that the tenant was not aware that these animals would be left to run freely around the property including her personal yard she did not take any action to inform the landlord in writing that these animals were becoming a problem to her, her family and her guests and give the landlord opportunity to rectify the situation. The Residential Tenancy Policy Guidelines # 6 refer to a tenant's right to quiet enjoyment and states that a tenant should have reasonable privacy, freedom from unreasonable disturbance, exclusive possession, subject to the landlords' right of entry under the legislation, and use of common areas for reasonable and lawful purposes, free from significant interference.

By the tenants own admission she, her family and guests encouraged the dog to play by throwing sticks for it and the nature of a dog is to continue to come back for attention when encouraged to do so. If the actions of the dog were unwelcome or posed a threat or nuisance to the tenant or her family the tenant should have made a complaint in writing to the landlord during the tenancy. The same process applies to the horse. The tenant admits her children fed the horse and had rides on the horse. The landlord argues that the tenant did not make him aware that the horse was intrusive or becoming a nuisance or threat to the tenant, her family or guests. The landlord should have been notified in writing by the tenant that a problem exists to allow the landlord to take steps to correct the problem during the course of the tenancy.

I also find that the tenant allowed her children to feed the chickens and collect the eggs. Again chickens will approach humans if they are being fed and the tenant did not suggest to the landlord to keep the chickens in an enclosed area.

I find that the tenant remained living on the property for 15 months without making a formal complaint to the landlord and therefore I question how much of a threat the animals were to the tenant and her family. Consequently it is my decision that the tenant has not provided sufficient evidence to show that the landlord was in breach of the covenant of quiet enjoyment and as such this section of her application is dismissed without leave to reapply.

### 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 **\$1,253.12**, comprised of double the security deposit plus accrued interest. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants' 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 29, 2010.

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Dispute Resolution Officer