

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on July 25, 2009, that rent was \$500.00 per month and that the tenant paid a \$250.00 security deposit. The rental unit is located on the lower floor of a residence in which the landlord occupies the upper floor.

The tenant's testimony is as follows. The rental unit was broken into, causing the door frame to split. The tenant's father discovered the damage to the door and performed repairs, leaving a note on the door. The following day a friend of the tenant found the note on the door and discussed the damage with the landlord. On November 18 the landlord served the tenant with a 10-day notice to end tenancy for unpaid rent (the "Notice") to which he attached a letter explaining that he had received rent for both November and December from the Ministry of Employment and Income Assistance, but wanted the tenant to vacate because the tenant had damaged the door. The tenant vacated the rental unit on November 27. The tenant supplied photographs of the unit and of the door taken on November 27 which show minimal damage to the door and further show a single deadbolt, underneath which is a lever door handle. The tenant was unable to leave the key to the rental unit in the unit at the end of the tenancy because the unit is locked solely by means of a single deadbolt and could not have been secured. On November 29 the tenant's father attempted to enter the rental unit

but was unable to do so because the key to the deadbolt no longer worked, leading him to believe that the locks had been changed. The tenant's father testified that he observed boxes outside the rental unit on December 11 which he believes belonged to new tenants who were moving into the unit. The tenant was unable to contact the landlord to return the key until January 4. The tenant's father testified that he spoke with the landlord in person at the residence on January 4 at which time he returned the key to the rental unit and the landlord advised that the unit had been re-rented for the month of January and that the new tenants had been given access to the unit in December to permit them to move their belongings in early. The tenant seeks recovery of rent for the month of December, return of the security deposit and \$150.00 for the inconvenience to the tenant's father for having to store the tenant's belongings in his garage for the month of December.

The landlord's testimony is as follows. The landlord believes the tenant and/or his guests caused the damage to the door and that the tenant should be responsible for the repair of that damage. The landlord acknowledged that he served the Notice even though he already had received rent for the month of November. The tenant did not vacate the rental unit on November 27 but was still in the rental unit on December 1 when the landlord left the residence to go into the hospital, where he remained for the next 6 weeks. The landlord arranged for a friend, J.N., to check up on the rental unit while the landlord was in the hospital. J.N. testified that he went over to the rental unit several times beginning approximately in the first week of December and that while he did not enter the unit, was able to see inside through the front window. J.N. testified that he saw a chesterfield in the unit but could not recall seeing other items. The landlord testified that he was not released from the hospital until mid-January and that he did not return to the unit until January 17, at which time he contacted the tenant's father. The tenant's father returned the key to the rental unit on January 17. When the landlord returned from the hospital he discovered that the lever door handle on the door to the rental unit had been replaced by a second deadbolt and that the door had been seriously damaged. The landlord provided photographs taken on January 20 which show damage to the door and the second deadbolt. The landlord provided an estimate showing that it would cost him \$613.70 to replace the door, frame, mini- blind and

deadbolt and further testified that he paid \$100.00 to clean the rental unit while the tenant lived therein and that he paid \$40.00 to cut the lawn which the tenant was responsible to do.

### Analysis

The landlord agreed that when he gave Notice on November 18 he already had in his hands the rent for November. I find that the landlord illegally evicted the tenant and that he is thereby estopped from making any claim for loss of income for December as he chose to end the tenancy. I therefore find that the tenant is entitled to recover the \$500.00 in rent paid for the month of December and I award the tenant that sum. In order to retain any part of the security deposit, the landlord must either secure the agreement of the tenant or obtain an order from a Dispute Resolution Officer permitting him to do so. In this case, the tenant agreed that the landlord could withhold \$100.00 for cleaning and \$40.00 for mowing the lawn. I find that the tenant is entitled to recover the outstanding \$110.00 and I award the tenant that sum. The tenant's claim to compensate his father for the inconvenience of storing the tenant's belongings is dismissed. There is no evidence that the tenant paid this sum to his father and the tenant's father does not have standing to make a claim for the inconvenience he suffered. I find that the tenant is entitled to recover the filing fee paid to bring this application and I award the tenant \$50.00.

### Conclusion

I grant the tenant a monetary order under section 67 for \$710.00 which represents \$500.00 for December's rent, \$110.00 for the security deposit and \$50.00 for the filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: April 6, 2010

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