

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant has applied for return of his security deposit and waived his right to claim for double the deposit, and requests his filing fee for the Application.

The Landlord filed for monetary orders for unpaid rent or utilities, for cleaning and damage to the rental unit, for compensation under the Act or tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Is the Landlord entitled to the monetary claims and relief requested?

### Background and Evidence

The tenancy began on August 1, 2008, and ended in August of 2009. The parties allege it was a fixed term lease, however, neither party provided a copy of those pages from the tenancy agreement. (The Tenant supplied three pages of a six page agreement.)

The monthly rent was \$1,445.00, and the Landlord received a security deposit of \$1,400.00 from the Tenant on August 10, 2008.

The Tenant alleges the Landlord gave a verbal eviction at the end of the tenancy and the Tenant moved out on August 1, 2009. The Tenant is requesting the return of the security deposit and his filing fee, totalling \$1,450.00

The Landlord alleges the Tenant left the rental unit without giving a notice to end tenancy. The Landlord alleges the Tenant attempted to negotiate an additional stay of 15 days in the rental unit in August of 2009, and in evidence submitted a copy of an NSF cheque issued by the Tenant for August 2009 rent.

The Landlord is claiming for one month of rent for August 2009, and for six days of rent in August for the Tenant being in the unit for six days in August of 2009.

The Landlord further claims for cleaning the entire rental unit in the amount of \$660.00. The Landlord claims cleaning the unit took 33 hours of cleaning at \$20.00 per hour.

The Landlord also claims \$95.00 for a damaged kitchen faucet, \$60.00 for a damaged shower faucet, \$60.00 to repair a kitchen railing, and \$20.00 for a missing smoke detector. The Landlord claims the Tenant damaged a hardwood floor and claims \$4,500.00 to replace the floor, or in the alternative, \$1,400.00 for a floor sander plus materials to repair the floor. The Landlord further claims \$200.00 for painting of rooms, \$80.00 to take garbage to the dump, and \$995.00 for an oak table, plates, glasses and a pool table the Landlord claims the Tenant removed from the rental unit.

In evidence the Landlord provided pictures to support some of the claims. There were no incoming or outgoing condition inspection reports supplied in evidence. There were no invoices or bills provided.

In reply to the Landlord's claims, the Tenant agrees the rental unit was not properly cleaned when they vacated. The Tenant testified that the pool table was not removed, but put in a storage unit at the property. The Tenant agrees the oak table was given away, however, the Tenant understood at the outset of the tenancy that the property left in the rental unit could be disposed of. The Tenant claims the faucets were already broken when they moved in and denies damaging the hardwood floors beyond reasonable wear and tear.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

There is insufficient evidence to prove on a balance of probabilities how the tenancy ended, whether it was the Landlord giving verbal notice or the Tenant not giving any notice. Either way, it appears neither party complied with the Act to end the tenancy. Therefore, I find the tenancy ended on August 6, 2009, and award the Landlord **\$280.00** for six days prorated rent in August of 2009.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, has the burden of proving the claims.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

If the party is successful in proving the claim, section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The photographic evidence indicates the rental unit was not cleaned to a reasonable standard as required by the Act, and the Tenant admits it was not cleaned well. Therefore, the Tenant has caused the Landlord a loss and I allow the Landlord **\$660.00** for cleaning the unit.

The photographs also indicate that the walls were marked with graffiti, stickers and children's ink stamp marks, and the Tenant did not deny this loss was caused by the Tenant. Therefore, I allow the Landlord **\$200.00** for preparation time and painting caused by the Tenant. Likewise, the Tenant admitted to causing a stain on the railing and I allow the Landlord **\$60.00** for this repair.

The Landlord did not include receipts for dump fees, however, the photographs indicate there was refuse left by the Tenant. I allow the Landlord **\$50.00** for losses under this portion of the claim.

As to the Landlord's claim for the missing oak table, and plates and glasses, the Landlord has not provided evidence of the value of these items, although the Tenant admits to disposing of these. The Landlord still has the pool table, according to the unrefuted evidence of the Tenant. Therefore, I find the Landlord has suffered some loss

and I allow the Landlord the nominal amount of **\$200.00** for this portion of the claim, taking into account depreciation and lack of valuation evidence.

The Landlord had insufficient evidence to prove the Tenant damaged the hardwood floor, such as an incoming condition inspection report to show the condition of the floor at the start of the tenancy. Likewise, there was insufficient evidence as to the condition of the faucets, or the smoke detector, at the outset of the tenancy. While I deny these portions of the Landlord's claim, I do find that based on the photographic evidence the Tenant did not clean the hardwood floor. I award the Landlord **\$100.00**, for floor cleaning rather than repairs or replacement.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,600.00** comprised of \$1,550.00 for the above described amounts and the \$50.00 fee paid by the Landlord for this application.

As to the Tenant's Application, I find that the Tenant is not entitled to the return of the security deposit, as there was significant cleaning and repairs to be done, as described above. **Therefore, I dismiss the Tenant's Application.**

I order that the Landlord retain the deposit and interest of **\$1,408.26** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$191.74**. This order may be filed in the Provincial Court (Small Claims) and enforced 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: March 15, 2010.

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Dispute Resolution Officer