

## **DECISION**

### **Dispute Codes**

For the landlords – MND, MNSD, FF

For the tenants – MNSD, FF

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the landlords and one brought by the tenants. Both files were heard together. The landlords seek a Monetary Order for damage to the unit, site or property and to keep the security and pet damage deposits. The landlords also seek to recover the filing fee paid for this application. The tenants seek the return of double their security and pet damage deposits and to recover the filing fee paid for their application.

This matter was originally scheduled for hearing on March 15, 2010; however, the landlords had not received the tenants hearing documents as they had been out of the country and the tenants did not send them by registered mail. The hearing was reconvened to give the landlord opportunity to receive the hearing documents or have the tenants re-serve the hearing documents. At the beginning of the reconvened hearing the landlord confirmed they have now received the tenants hearing package.

I find that both parties have now been 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 landlord entitled to a Monetary Order for damage to the rental unit?

- Is the landlord entitled to keep the security and pet damage deposits?
- Are the tenants entitled to recover double their security and pet damage deposits?

### Background and Evidence

Both Parties agree that this tenancy started on November 15, 2008 for a fixed term until March 15, 2009. Both parties agreed to enter into another short fixed term tenancy on March 16, 2009 until May 31, 2009. The tenants moved from the rental unit on June 15, 2009 and returned the keys on June 17, 2009. Rent for this unit was \$1,400.00 per month which was due on the first of each month. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$200.00 on November 11, 2008. A move in condition inspection was completed but no move out condition inspection took place. The tenants gave the landlord their forwarding address in writing on November 01, 2009.

### The landlord's application

The landlord testifies that he did not complete the move out condition inspection. He claims that on June 15, 2009 he was present when the tenants were moving out and the tenants told him they would contact him in a few days to arrange to meet to do the inspection. The landlord claims the tenants did not contact him and the numbers he had for them were no longer in service. The tenants did not give the landlord their forwarding address at that time. The landlord agrees that he did not complete the move in inspection in the tenant's absence.

The landlord testifies that the tenants had left some damage and unclean areas in the property. The landlord found cat litter imbedded in the master bedroom carpet and was told by the tenant's son that they had locked the cat in this room during the move out. Areas of the carpet particularly by the front and back doors were also left dirty. The landlord claims he hired a carpet cleaning machine and cleaned the carpet himself at a cost of \$45.00 for the machine and \$150.00 for his labour costs; he found dog faeces all over the yard and claims several days clearing this at a cost for his labour of \$300.00; he claims the tenants had not cared for the lawn or flower beds and he had to mow the lawn and weed the garden at a cost for his labour of \$325.00. The landlord states that the tenants signed an addendum to the tenancy agreement which clearly states that they have been advised to clean up pet waste in the yard as excessive dog droppings were noticed in the rear yard in February 2009.

The landlord testifies that the tenants smoked in the property and he had to reduce his rent in order to re-rent the property because the smell of smoke continued to linger in the master bedroom. Rent was \$1,400.00 and he reduced it to \$1,250.00, the light cover in the front bedroom was broken; the main bathroom toilet had two bolts holding the upper tank to the bowl broken off causing water to leak onto the floor.

The landlord testifies that the tenants had the gas supply cut off in February, 2009. This property requires gas to run the hot water tank and heating system in the home. Since the hot water was not running for five months and the tank was not drained this caused the tank to rust within and a build up of rusty water occurred. The landlord claims he had to drain the tank flush it through and add conditioner. The landlord claims his labour costs of \$150.00 for this work.

The landlord claims the tenants cut limbs from the corporation's boulevard trees without permission from the corporation. The landlord claims this has damaged the trees and he may be liable for these costs in the future.

The landlord claims he met the tenant at his place of work in August 2009 but no forwarding address was given to him at that time.

The male tenant testifies that during their move out the landlords arrived at the house and he asked them about doing the move out condition inspection. The tenants claim the landlord said that everything looked fine. The tenants claim the landlord had their cell phone numbers and work numbers but did not contact them to take part in a move out condition inspection. The tenant claims the landlord came to his work place to serve him with a previous Order so he knew where the male tenant worked and could have contacted him. The tenant also claimed the landlord turned up at their new address in August, 2009 so he knew where they lived.

The tenant disputes the remainder of the landlord's claims. The tenant testifies that he cleaned the carpets a month before they moved out. He claims the gardens were always maintained and left in a better condition than when he moved in, The tenant has provided photographic evidence of the gardens when they moved into the property and when they moved out in evidence. The tenant states that they cleared up any dog faeces in the yard as he would not have been able to mow the lawn if he had left it there as suggested by the landlord.

The tenant argues that he did not smoke in the house due to his wife's health condition and although his father in law did smoke in the house on occasion, the house was well aired to remove traces of smoke. The tenant also argues that no one smoked in the master bedroom. The tenant argues that the cat litter box was not kept in the master bedroom but in the mud room and he had no idea how cat litter could have got into the master bedroom carpet. The tenant claims that the move in condition inspection report shows the house was very run down when they moved in, the house was old and the floors and carpets were dirty and stained. The tenant agrees that a light fixture did get broken during the move and he forgot to mention it to the landlord but states this could be replaced for a few dollars.

The tenant testifies that they cancelled the utilities before they moved out and managed with small heaters. The tenant claims that hot water tanks have naturally occurring rust and they must be flushed out annually. The tenant testifies that he did remove a few smaller branches from the boulevard trees as they were over hanging and scratched his car as he drove onto the property.

#### The tenant's application

The tenants seeks the return of double the security and pet damage deposits as they landlord did not return it within 15 days of receiving their forwarding address. The tenants claim that the landlord knew where they lived prior to them sending him their forwarding address as he had trespassed on their property.

The landlord testifies that he called one of the tenant's references given on their application to rent and he was told the street the tenants had moved to. At that time the landlord had to serve the tenants with a previous Order issued after a hearing held through the Residential Tenancy Branch. The landlord claims he drove to the road and had to determine which house the tenants lived in by looking for their cars in order to serve them with this notice. The landlord claims that he did not receive the tenants forwarding address in writing until November 01, 2009.

#### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regards to the landlords claim for a Monetary Order for damage to the rental unit, site or property; I have applied a test for damage or loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet all of the components of the above test. The landlord present at the hearing stated that he did not complete a move out condition inspection report. This report could have been used as evidence to show the condition of the property at the end of the tenancy to determine what damages or cleaning, if any, were the responsibility of the tenants. The landlord has provided some photographic evidence concerning dog feces, stains on the carpets and flooring, the toilet system and a broken light fixture however he has not provided any evidence to show that the alleged damage was caused by the tenants with the exception of the dog feces. Finally the landlord has not provided any evidence to verify the actual amount required to compensate him for the claimed loss or to rectify the damage. I do however find it likely that the tenants did not clear the dog feces from the garden as it would be unlikely that the landlord would have taken photographs of dog feces in another garden. The landlord has claimed an amount of \$300.00 to clear the garden of the feces however I find this amount to be excessive dispute the unpleasant nature of the job and have therefore reduced the landlords claim to an amount of \$150.00.

When a landlord's testimony is disputed by the tenants the burden of proof lies with the landlord who must provide additional corroborating evidence to support his claim. The tenant's documentary evidence shows the condition of the rental unit at the start of the tenancy and the work they did to clear and maintain the garden during their tenancy. Consequently I find the landlord has not provided sufficient evidence to support his claim and this section of the landlords claim is dismissed with the exception of a monetary award to clear the dog feces.

With regards to the landlords claim to keep the tenants security and pet damage deposits; Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the Tenants moved out, I find the landlords contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) 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 landlord to keep **\$150.00** from the tenants' pet damage deposit to compensate him for the cleanup of dog feces pursuant to section 38(4)(b) of the Act.

As the landlord has been largely unsuccessful with his claim I find he must bear the cost of filing his own application.

With regards to the tenants claim for double the security and pet damage deposits; 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 not receive the tenants forwarding address in writing until November 01, 2009. As a result, the landlord had until November 16, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. The landlord filed an application to keep the security and pet damage deposits on November 12, 2009 within the 15 days allowed under the Act. Consequently I find the tenants are not entitled to recover double the deposits.

The tenants will receive a Monetary Order for the remainder of the pet damage deposit (\$50.00) and the security deposit (\$700.00) plus accrued interest (\$1.88) to the sum of **\$751.88** pursuant to section 67 of the *Act*.

As the tenants have been partially successful with their application I find they must also bear the cost of filing their own application.

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may retain **\$150.00** from the pet damage deposit.

The remainder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$751.88**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants claim 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: May 04, 2010.

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Dispute Resolution Officer