

## **DECISION**

### **Dispute Codes**

For the landlord – MNSD, FF

For the tenant - MNSD, FF

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks an order to keep the security deposit and a monetary order to recover the filing fee. The tenant seeks a monetary order for the return of the security deposit and to recover the filing fee

The landlord served the tenant by registered mail on February 04, 2010 with a copy of the Application and Notice of Hearing. The tenant served the landlord in person on February 07, 2010 with a copy of the application and a Notice of the 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 witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### **Preliminary issues**

The tenant sent in evidence that was filed late and the landlord did not receive copies of this evidence before the hearing. Therefore, this evidence has not been considered in my decision. From the information provided during the hearing I accept that the landlords' agent is acting on behalf of the landlord and the tenants' agent is acting on behalf of the tenant

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

- Is the landlord entitled to keep the security deposit?

- Is the tenant entitled to recover the security deposit?

### Background and Evidence

Both Parties agree that this tenancy started on April 01, 2009. This was a fixed term tenancy which was due to expire on April 30, 2010. The tenant paid a monthly rent of \$599.00 which was due on the first of each month. The tenant paid a security deposit of \$299.50 on March 23, 2009. The tenancy ended on November 27, 2009.

The landlord testifies that the tenant moved from the rental unit eight months after the tenancy started and did not adhere to the tenancy agreement. The landlord has not applied for unpaid rent or a loss of revenue in his application. The landlords' agent testifies that a condition inspection report was completed at the start of the tenancy and a move out condition inspection was completed in the absence of the tenant at the end of the tenancy.

The landlords' agent states that the tenancy agreement in place had an addendum which included a term which stated that a tenant must clean the drapes at the end of a tenancy and have a professional carpet clean at the end of the tenancy. The landlord testifies that upon vacating the unit the tenant did not do these things. The landlord also states that the tenant had left some areas of the unit dirty including cupboards, walls and floors and the kitchen and bathroom. The landlord has submitted invoices for this work to be carried out as follows: Carpet cleaning \$57.75. The landlord seeks the amount of \$120.00 for additional administrative fees and site fees for this work. Drape cleaning, \$56.00. The landlord seeks the amount of \$95.00 for administrative fees and site fees for this work. The landlord seeks costs for painting two walls at \$50.00 a wall to a cost of \$100.00. The landlord claims these walls were dirty to an extent that they could not be cleaned and had been freshly painted at the start of the tenancy. The landlord seeks cleaning costs at \$25.00 per hour for four hours work to a total sum of \$100.00. The landlords' agent states the landlord only wishes to retain the security deposit of \$299.50 towards these costs

The landlords agent testifies that the previous building manager would have given the tenant a letter when notice was given to end tenancy to inform the tenant what was required of her with regard to cleaning the unit and attending the move out inspection. The landlords agent testifies

that this was his former building manager who he states would have given the tenant opportunity to attend the inspection; however as this manager is no longer employed by the company he is not present to give evidence concerning this.

The tenants' agent testifies that the unit was left in a clean condition at the end of the tenancy. Four people including herself helped clean the unit and she disputes the landlords agents testimony that cleaning was still required. The tenants' agent called her witness who testifies that he contacted the manager who promised to return the tenants security deposit. When this manager left the company he called the head office for the landlord who told him that they did not know anything about this. This witness also testifies that the unit was left in a clean and good condition and when he went into the unit at the end of the tenancy he claims it was perfect. This witness testifies that the manager told the tenant to just clean up and move and did not ask her to attend a move out condition inspection.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness, With regard to the landlords claim to keep the security deposit of \$299.50. Section 35(1) and (2) of the act states:

### **Condition inspection: end of tenancy**

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 36(2)(a) of the Act states:

### **Consequences for tenant and landlord if report requirements not met**

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

The tenants' agent and witness disputes that the tenant was offered opportunity to attend the move out condition inspection. If the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the tenant was offered at least two opportunities to take part in the move out condition inspection. Consequently, the landlords' right to make a claim to keep all or part of the security deposit for damage to the rental unit is extinguished.

Therefore, I find the landlord is not entitled to keep the security deposit and the landlords' application is dismissed.

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

With regards to the tenants application to recover the security deposit; it is my decision, based on my findings above, that the tenant is entitled to the return of her security deposit of **\$299.50** and a Monetary Order will accompany the tenants' decision pursuant to section 67 of the *Act*. I further find as the tenant has been successful in this matter she is entitled to recover the **\$50.00** filing fee paid for her application pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the amount of **\$349.50**

### Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$349.50**. The order must be served on the landlord and is enforceable through the Provincial Court 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: May 07, 2010.

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Dispute Resolution Officer