

## **DECISION**

Dispute Codes      MNSD, MNDC, O

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and, other issues. Both parties appeared at the hearing and were provided the opportunity to be heard. The landlord confirmed service of the tenant's application and notice of this hearing.

The landlord had submitted late evidence for this hearing to the Residential Tenancy Branch. The landlord testified the tenant was served with the landlord's evidence on May 14, 2010 by a process server. The tenant testified that she had not been served with evidence for this hearing but was served yesterday with the landlord's Application for Dispute Resolution that is set to be heard in October 2010. The landlord was unable to produce proof of service of evidence upon the tenant on May 14, 2010 and I refused to consider the documentary evidence submitted by the landlord. Rather, I accepted verbal testimony from the landlord.

As a procedural note, the landlord was cautioned about her interruptions and speaking out of turn. When the landlord's conduct did not improve the landlord was advised that if she could not conduct herself appropriately she would be asked to leave the teleconference call and I would proceed to speak with the tenant. The landlord proceeded to hang up her telephone and I continued to accept testimony from the tenant.

### Issues(s) to be Decided

1. Is the tenant entitled to receive compensation equivalent to one month's rent for November 2009?
2. Is the tenant entitled to return of the security deposit?
3. Is the tenant entitled to compensation from the landlord for loss of possessions?

### Background and Evidence

I heard undisputed testimony as follows. The month-to-month tenancy commenced May 1, 2009. The tenant was required to pay rent of \$650.00 on the 1<sup>st</sup> day of the month. During the tenancy, the landlord purchased the residential property from the former landlords and received credit of \$325.00 from the former landlords with respect to a security deposit for the tenancy. On September 26, 2009 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with an effective date of November 30, 2009. On October 29, 2009 the tenant served the landlord with a notice to end the tenancy 10 days later on November 8, 2009. On October 29, 2009 the landlord changed the locks to the rental unit. On October 30, 2009 the tenant arrived at the rental unit to clean the unit and remove the remainder of her possessions from the rental unit but found the locks changed. The tenant arrived at the property on October 31, 2009 to participate in the move-out inspection that had been arranged by the landlord but the landlord did not appear. The tenant found the remainder of her possessions on the front porch except for the contents of her fridge. The landlord couriered the fridge contents to the tenant in January 2010.

In making this application the tenant is seeking compensation of one month's rent because she was served a 2 Month Notice by the landlord. When the tenant gave notice on October 29, 2009 the tenant requested pro-rated compensation for November 9 – 30, 2009. However, in making this application the tenant requested the landlord pay compensation for the entire month of November 2009. In making this application the tenant is seeking return of the security deposit. The tenant acknowledged she had not provided the landlord with a forwarding address in writing prior to making this application. The tenant is seeking compensation of \$70.00 for the contents of her fridge

the landlord did not return to her until January 2010. The tenant testified she threw the contents out upon receiving them as she was unsure they were safe for consumption.

The landlord explained that she changed the locks to the rental unit because the tenant's partner shoved the landlord's door in after the tenant served the landlord with the tenant's notice on October 29, 2009. Upon further enquiry, the landlord explained that she knew it was illegal to change the locks on the tenant but felt her property was at risk of being damaged. The landlord also admitted to entering the rental unit on October 29, 2009 without notice or consent of the tenant and alleged that the unit was damaged and unclean. The landlord explained she did not attend the rental unit to participate in the move-out inspection as she feared further confrontation. The landlord also attributed much of the landlord's actions to the tenant being elusive with the landlord.

The landlord was of the position the tenant has not paid the former landlords a security deposit. The landlord was of the position that the tenant should not be entitled to compensation any greater than pro-rated rent from November 9 – 30, 2009.

The tenant disputed that the person accompanying her to the landlord's residence on October 29, 2009 shoved in the landlord's door as alleged by the landlord. The tenant disputed the landlord's assertion that she did not pay her former landlords for the security deposit credited to the landlord when the property was transferred to the landlord.

The documentary evidence I considered in this decision is: the 2 Month Notice to End Tenancy issued to the tenant, the tenant's 10 day notice, and a letter from the landlord to the tenant dated October 25, 2009 advising the tenant a move-out inspection would take place October 31, 2009 at 11:00 a.m.

### Analysis

Section 93 of the Act provides that obligations of a landlord under this Act with respect to a security deposit or a pet deposit run with the land or reversion. Having heard the landlord received a credit of \$325.00 from the former landlords for the security deposit for this tenancy, I find the landlord holds a security deposit in trust for the tenant and I will proceed to consider whether the tenant is entitled to its return.

The landlord acknowledged that she had set up an appointment to conduct a move-out inspection and that the landlord did not attend the inspection. I did not find the landlord's disputed testimony and lack of other substantive evidence established that the landlord could not attend the move out inspection due to actions of the tenant or a person acting on behalf of the tenant. The landlord testified the police had been called on October 29, 2009 but the landlord provide a copy of the police report despite having five months to prepare for this hearing. Further, if the landlord was fearful of further interaction with the tenant, the landlord was at liberty to have someone assist her or act as the landlord's agent. Therefore, I do not find the landlord provided sufficient evidence to establish a legal basis for not meeting the landlord's statutory obligation to participate in the move-out inspection.

Failure to attend a scheduled move-out inspection is a violation of the Act and such a violation has consequences under the Act including the extinguishment of the right to the security deposit. Pursuant to section 36(2) of the Act, I find the landlord extinguished the right to claim against the security deposit for damage to the rental unit. I do not find evidence that the tenant authorized the landlord to retain the security deposit for any amounts owing to the landlord. Therefore, I find the landlord has no legal right to claim against the security deposit or authority to retain the security deposit and I find the tenant is entitled to its return.

I understand the landlord has recently made an application against the tenant for damages to the rental unit. The landlord retains the right to establish an entitlement to compensation for any damages caused by the tenant at the hearing scheduled for

October 2010; however, with this decision the security deposit the landlord has been ordered to return the security deposit to the tenant.

Where a landlord issues a 2 Month Notice to the tenant, the tenant is entitled to compensation equivalent to one month's rent under section 51 of the Act. Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

Under section 50 of the Act, a tenant who has received a 2 Month Notice may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice.

Where the tenant has paid full rent for the first of the two months and has given a written 10 day notice to vacate on a date that falls in the second month, if the tenant does not pay rent for the second month, the tenant receives free occupancy for a portion of the last month, and then is entitled to receive financial restitution for the remaining days of the last month, after the tenancy ended.

I find that the tenant legally ended the tenancy November 8, 2009 and since the tenant did not pay rent for November 2009 the tenant was entitled to receive free occupancy of the unit up until November 8, 2009 and compensation of pro-rated rent in the amount of \$476.52. I award the tenant compensation of \$476.52 under section 51 of the Act.

Having heard the landlord changed the locks to the rental unit on October 29, 2009, when the tenancy was still legally in effect, the landlord violated section 28 of the Act and I find the tenant suffered loss of use of the rental unit for those days. I award the tenant the remainder of the amount claimed by the tenant (\$650.00 - \$476.52 = \$173.48) as compensation for loss of use under section 67 of the Act.

I find the landlord's violation of the Act by restricting the tenant's ability to access the rental unit further caused the tenant to incur a loss with respect to the contents of the tenant's fridge. I accept the tenant's position that the tenant could not be assured the contents were safe for consumption upon their return in January 2010 and it was reasonable to throw the contents in the garbage. Factoring in time and inconvenience to replace the contents, I grant the tenant's request for compensation of \$70.00 under section 67 of the Act.

In light of the above findings, the landlord is hereby ordered to pay the tenant the following amounts:

Security deposit	\$ 325.00
Section 51 tenant's compensation	476.52
Loss of use of rental unit	173.48
Loss of tenant's possessions	<u>70.00</u>
Total Monetary Order for tenant	\$ 1,045.00

The tenant must serve the Monetary Order upon the landlord and may enforce it in Provincial Court (Small Claims).

### Conclusion

The tenant was successful in this application and has been provided a Monetary Order of \$1,045.00 to serve upon the landlord.

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 20, 2010.

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Dispute Resolution Officer