

## **DECISION**

Dispute Codes            MND, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for damage to the unit, site or property and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit, a Monetary Order to recover the filing fee and other issues.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the tenants by registered mail on April 13, 2010. The landlord amended her application on May 17, 2010 and this was also sent to the tenants by registered mail on May 17, 2010. I find that the tenants were properly served pursuant to s. 89 of the *Act* with notice of this hearing and the landlords evidence.

The landlords' agent and the male tenant appeared. Both Parties 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 unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

Both parties agree that this tenancy first started on April 01, 2002 and both parties entered into a new tenancy agreement on February 01, 2008. This was a month to month tenancy and rent for this unit was \$1,325.00 per month due on the first of each month. The tenants paid a security deposit of \$650.00 on March 13, 2002. The landlord did not complete a move in condition inspection as the tenancy started before January 01, 2004. No move out condition inspection was completed at the end of the tenancy. The tenants vacated the rental unit on March 31, 2010 after providing the landlord with one months notice.

The landlords' agent testifies that the tenants damaged the fridge in the unit, the handle was broken off, the trim on the inside drawer was damaged, the seal on the door was damaged and the fridge had not been cleaned. The landlord has provided an invoice for these repairs and claims the sum of \$393.05. The landlord claims this fridge was new seven years ago when the landlord replaced the old fridge in the unit.

The landlords' agent testifies that the tenants left a large amount of garbage at the unit after they moved out. The landlord seeks the transfer station fees for disposing of this garbage at a sum of \$29.00.

The landlords' agent testifies that at the end of the tenancy the tenant's large storage container remained at the rental property, filled with the tenant's belongings, for 15 days. The landlord claims that this hindered the landlords' access to the rental property during this time and prevented them getting a garbage bin on to the property to remove items from the house. The landlords' agent states that the tenants were given a Two Month Notice to End Tenancy as the landlord wanted to move back into the property. The tenants had ample time to find storage for this container and they chose to give notice to end the tenancy a month early on March 31, 2010. The landlord seeks to retain the tenant's security deposit in compensation for storage of this container for 15 days at \$43.00 a day to a sum of \$645.00.

The tenant disputes the damage to the fridge. He states the handle just came off and was not broken. The tenant claims he spoke to the landlords' son-in-law who lived next door and who did repairs at the rental unit. He claims this person told him that if they were happy to use the fridge without a handle to just leaves the handle off. The tenant claims the rest of the damage to the fridge is normal wear and tear after eight years of their tenancy and he claims the fridge was not replaced during their tenancy.

The tenant claims he had an arrangement with the landlords son-in-law to remove the garbage left at the property and they would reimburse him for these costs. The tenant states that this arrangement is still in place and should not form part of this hearing. The tenant disputes the amount of garbage the landlords' agent states he removed from the property.

The tenant does not dispute that the container was left at the property but states that they were trying to have it removed. The tenant claims he kept the landlords son-in-law informed about what was happening with the container.

The tenant argues that as the landlord did not conduct a move out condition inspection at the end of the tenancy the landlord has extinguished her rights to make a claim against the security deposit. The tenant also argues that in this instance the landlord was not entitled to make a claim to keep the security deposit and did not return the deposit to the tenants within 15 days of the end of the tenancy. Therefore, the tenant argues they are entitled to recover double the security deposit.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for compensation for storage of the tenants container for 15 days; I find the tenants did leave this container at the rental property after the end of the tenancy and did not have an agreement with the landlord to do so. Section 24 (1) (a) of the Residential Tenancy Regulations states:

### **Abandonment of personal property**

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended,

Consequently, section 26(1) (a) states:

### **Tenant's claim for abandoned property**

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and

(ii) a search required to comply with section 27 [*notice of disposition*], and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

The landlord seeks to keep the majority of the tenant's security deposit in compensation for storage of their container and personal belongings contained within it on the property as it was not feasible for the landlords to have this container removed. I agree that the landlord is entitled to compensation for this storage pursuant to section 26 of the regulations, however; I find the amount claimed is not a reasonable cost considering that rent for the whole property was \$1,325.00 per month. Therefore, I find the amount the landlord is entitled to has been reduced to \$20.00 per day for the 15 days of storage to a sum of **\$300.00**.

Based on the testimony, evidence and balance of probabilities, I find that the landlord has established his claim for damage to the fridge. While the tenant argues that the fridge was seven or eight years old it was still in working condition and therefore the tenants are responsible for any damage to it. Consequently, I find the landlord is entitled to recover **\$393.05** for these repairs.

The tenant argues that he had an agreement with the landlords' son-in-law to remove the garbage from the property, however the landlord testifies that the landlords' son-in-law is not the

property manager of the unit and therefore was not authorised to enter into an agreement with the tenants. In any event the garbage was removed and although the tenant disputes the amount of garbage taken to the transfer station for disposal the photographs provided by the landlord do show an amount likely to weigh the amount shown on the invoice from the transfer station. Consequently, I find the landlord is entitled to recover the amount of **\$29.00** from the tenants.

The tenant argues that the landlord is not entitled to make a claim against the security deposit as he did not carry out a move out condition inspection at the end of the tenancy. However, I refer both Parties to section 36 (2) of the Act which 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*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the landlord made an application to keep the security deposit in compensation for storage of the container and tenant's personal belongings and not for damages to the rental unit and claims for compensation are not excluded under the *Act*. Therefore, I find the landlord was entitled to file a claim against the security deposit and did so within 15 days allowed under the *Act*. Consequently, the tenant's argument that they are entitled to claim double the security deposit has no merit because the landlord was entitled to file a claim against the security deposit at the time she did so.

I find that sections 38(4)(b), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages and compensation 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 the tenants' security deposit of \$650.00 and accrued interest of \$23.01 in partial satisfaction of his claim.

I further find the landlord is entitled to recover the \$50.00 filing fee paid for his application pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount:

Repairs to the fridge	\$393.05
Compensation for storage of container	\$300.00
Filing fee	\$50.00
Subtotal	\$772.05
Less security deposit and accrued interest	(-\$673.01)
<b>Total amount due to the landlord</b>	<b>\$99.04</b>

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$99.04**. The order must be served on the respondent 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: June 01, 2010.

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Dispute Resolution Officer