

## **DECISION**

**Dispute Codes**      OPE, MNSD, MNR, MND, FF

### **Introduction**

This hearing was convened by way of conference call this date to deal with the landlord's application for an Order of Possession, for a monetary order for damage to the unit, site or property and for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this application. The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the landlord testified that the tenant had vacated the unit, and that an Order of Possession is not required. Therefore, that portion of the application is hereby dismissed as withdrawn by the applicant.

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

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This tenancy began on November 1, 2008 as a fixed term tenancy which expired on November 1, 2009 and then continued as a month-to-month tenancy. The tenant paid a security deposit in the amount of \$650.00 on November 1, 2008. At the outset of the tenancy, rent was payable on the 1<sup>st</sup> day of each month in the amount of \$1,300.00, however the landlord testified that rent was reduced to \$950.00 per month, payable on the 1<sup>st</sup> day of each month commencing October 1, 2009. The landlord testified that she reduced the rent to assist the tenant. The landlord also testified that the tenancy

agreement specifies that the tenant is also responsible for the payment of utilities, however a copy of the tenancy agreement was not provided as evidence.

The landlord testified that the tenant sent an email to the landlord on January 5, 2010 stating that she was moving out on January 31, 2010. This evidence is not disputed by the tenant. The tenant testified that she actually moved out on January 15, 2010 and returned to the unit to show to prospective tenants from time to time. She also stated that she offered to give the landlord 5 days of rent for the late notice. The landlord attempted to re-rent the unit for February 1, 2010 but was not able to re-rent until March 1, 2010. No move-in condition inspection report was completed by the parties, nor was a move-out condition inspection report.

The tenant further testified that she sent an email to the landlord on February 1, 2010 which contained her forwarding address however the landlord stated that she did not receive it until a later date, but was not able to confirm that date. A copy of that email has not been provided for the hearing.

The landlord further stated that she was not pursuing the unpaid utilities because she had not given the tenant written notice for the payment of those utilities as required under the *Act*.

### **Analysis**

As for the monetary order, I find that the landlord has established a claim for \$950.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

With respect to the security deposit, the *Residential Tenancy Act* states:

**36 (2)** Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or 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.

Further, I find that the landlord has failed to prove any damages, and is therefore not entitled to claim against the security deposit with respect to damages. I further find that the tenant has failed to prove that the landlord has received her forwarding address in writing more than 15 days prior to the date that the landlord applied for dispute resolution claiming against that security deposit, and therefore, the tenant is not entitled to double the base amount of the security deposit.

I find, however, that the tenant is responsible for paying the rent for the month of February, 2010, in that the *Act* states that:

**45 (1)** A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,  
and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenancy is based on rent payable on the 1<sup>st</sup> day of the month, and the tenant's notice must be given earlier than the 1<sup>st</sup> day of the month.

## **Conclusion**

For the reasons set out above, I grant the landlord a monetary order in the amount of \$950.00 for unpaid rent. The landlord is also entitled to recover the filing fee from the tenant in the amount of \$50.00. I order that the landlord retain the security deposit and

interest in the amount of \$651.62 and I grant the landlord an order under section 67 for the balance due of \$348.38. This order may be filed in the Small Claims Court 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: June 14, 2010.

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Dispute Resolution Officer