

## **DECISION**

Dispute Codes      MND, MNSD, MNR, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request for a monetary order for \$1300.00 a request to retain the full security deposit towards this claim. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

### Background and Evidence

The applicant testified that:

- The tenant vacated the rental unit without giving any notice, and as a result she lost the full rental revenue for the month of March 2010.
- The tenant also left the following damages:
  - Fence damaged and in need of repair.
  - Rust stain on hot tub lid.
  - Wall damage.
  - Furniture left behind.
- The tenant also left the rental unit in need of substantial cleaning as follows:

- Fridge not defrosted or wipe down.
- Oven not cleaned.
- Kitchen cupboards not clean.
- Kitchen floor left dirty.
- Bathroom not cleaned.
- Carpets not vacuumed or cleaned with stains and pet odour.

The applicant is therefore requesting a claim as follows;

lost rental revenue for March 2010	\$650.00
Clean hot tub lid	\$100.00
Plaster and paint walls	\$75.00
Dispose of abandoned furniture	\$75.00
Cleaning suite	\$250.00
Filing fee	\$50.00
Total	\$1350.00

The applicant requests that she be allowed to retain the full security deposit towards this claim and a monetary order be issued for the difference.

The respondent testified that:

- He vacated the rental unit without notice; because he felt that the landlord was harassing him.
- He suspected the landlord had also been entering his rental unit when he was not there although he had no proof to substantiate this claim.
- He felt the landlord was spying on him and his girlfriend, and he believes that a photo supplied by the landlord substantiates this claim, as the landlord has actually taken a photo through the window of his rental unit while he was still in possession of the unit.
- He had damaged the fence on the rental property however he had completely fixed the fence back to the same condition it had been in prior to the damage.

- He had left some items on top of the hot tub lid however when asked to remove them, he did so and also cleaned the hot tub lid.
- He does not dispute the landlords claim for plastering and repainting walls or for disposal of some furniture he left behind however the security deposit would more than cover the cost of those items.
- He left the rental unit clean when he vacated, and he believes that the landlord took photos in the rental unit prior to him vacating as the condition shown in the photos varies from the condition in which he left the unit.

The respondent therefore believes that the landlord's application should be dismissed in full, except for the items he has agreed to.

### Analysis

During a tenancy the tenant has the right to quiet enjoyment of their rental unit and in this case it is my finding that the landlord has breached that right and in fact one of the photos provided by the landlord as evidence, supports that claim, as it is a photo taken of the interior of the unit through the window while the tenant still had possession in the rental unit.

It's obvious from the testimony of both sides that there was some animosity between the parties near the end of this tenancy, however that does not give the landlord the right to breach the tenants right to quiet enjoyment, and taking photos through the tenants window is an obvious breach of that right. The landlord even admits that she took a photo through the window, claiming that she felt it was necessary to help support her claim.

Therefore since the landlord breached the tenants right to quiet enjoyment is my decision that the tenants had the right to end this tenancy without the normal one months notice, and therefore I will not allow the landlords claim for lost rental revenue.

Also deny the landlords claim for fence repair. The landlord has admitted that this repair has not yet been done, and I am not convinced of the necessity for such a repair. The tenant claims to have repaired the fence to the condition it was in prior to the accident, and the landlord has supplied insufficient evidence to prove otherwise.

I also deny the landlords claim for cleaning of the hot tub lid. The tenant claims to have cleaned the lid before he vacated, and the landlord has supplied no evidence to show that the lid is still in need of cleaning. The only photo of the hot tub lid supplied by the landlord was photo a taken prior to the tenant vacating.

The tenant does not dispute the claims for plastering and painting walls and disposal of furniture left behind, and therefore I allow those portions of the claim for a total of \$150.00.

I will also allow the amounts claimed by the landlord for cleaning because it is my finding that the landlord has supplied sufficient evidence to show that the rental unit was not left in a reasonable state of cleanliness. It is also my decision that the amounts charged by the landlord for cleaning are reasonable. I therefore allow the full \$250.00 claim by the landlords for cleaning.

I also allow the landlords claim for the filing fee, because the amount of the claim that I have allowed does exceed the amount of the security deposit which the tenant has allowed the landlord to keep.

### Conclusion

I have allowed \$450.00 of the landlords claim; I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$325.00

I further Order that the Respondent(s) pay to the applicants the following amount:

\$125.00

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 11, 2010.

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Dispute Resolution Officer