

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied to retain a portion of the security deposit. The tenant has applied to return of double the amount of the security deposit.

The hearing was conducted via teleconference and was attended by both parties.

The landlord had provided confirmation that she had attempted to serve the tenant with her evidence package by express post but that the evidence package had been returned as unclaimed. I am satisfied the landlord met her obligation for the service of her evidence package as required by Section 89 of the *Residential Tenancy Act (Act)*.

The tenant acknowledged and the landlord concurred that the tenant had not yet cashed the cheque from the landlord. All parties agreed the tenant would not cash the cheque and the landlord would be putting a stop payment on the cheque at this time.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 20, 38, 67, and 72 of the *Act*.

In addition it must be decided whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 20, 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided the following documents into evidence:

- A copy of a tenancy agreement and addendum that includes a clause that the tenant agrees to deduct the cost of cleaning the carpets signed by the parties on September 29, 2009 for a one year fixed term tenancy starting on October 1, 2009 for the monthly rent of \$1,250.00 due on the 1<sup>st</sup> of the month with a security deposit of \$625.00 paid on October 1, 2009;
- A copy of a letter sent to the tenant from the landlord dated January 5, 2010 outlining what she was withholding from the security deposit and why;
- A summary of events relating to the landlord's claim, including confirmation the tenancy ended on December 31, 2009; and
- Several screen prints of text messaging between the landlord and the tenant.

The tenant has submitted the following additional documents into evidence:

- A copy of a cheque payable to the tenant from the landlord dated January 5, 2010 in the amount of \$325.00 noted as "Damage Deposit";
- Copies of two text messages between the parties;
- A summary of events relating to the tenant's claim.

The landlord testified that she was claiming \$250.00 for carpet cleaning, as per the addendum in the tenancy agreement based on a previous cost to clean the carpets in the rental unit and \$50.00 for 2 hours of cleaning the basement and stove even though she and her assistants cleaned for 12 hours.

The tenant did not dispute paying for having the carpets cleaned but did dispute the amount, he felt he should only be required to pay \$100.00. He further disputes that he should have to pay for cleaning for items that were left behind from a previous tenant and that the stove was cleaned.

### Analysis

Section 20 of the *Act* states a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.

The Residential Tenancy Policy Guidelines stipulate that after a tenancy of 1 year a tenant would be expected to clean carpets but unless the tenant has deliberately or carelessly stained the carpet in a shorter tenancy the tenant would not be expected to have the carpets clean. This tenancy lasted 3 months.

Despite what I have noted above I accept that the tenant has agreed for the landlord to withhold \$100.00 for carpet cleaning. The landlord has not provided any evidence to justify costs associated with carpet cleaning in excess of this. I do accept the landlord's claim of two hours cleaning time in the amount of \$50.00 to be reasonable.

Section 38 of the *Act* requires the landlord, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, to return the security deposit to the tenant, less any mutually agreed upon deductions, or file an Application for Dispute Resolution to claim against the security deposit. The landlord filed her application 3 months after the end of the tenancy.

This section goes on to state that should the landlord fail to return the security deposit or file an Application for Dispute Resolution the landlord must pay the tenant double the amount of the security deposit. The section does not provide to exclude any monies already returned to the tenant from being doubled.

### Conclusion

Based on the above findings, I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,100.00** comprised of \$1,250.00 double the security deposit less \$150.00 for cleaning and carpet cleaning.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As both parties were at least partially successful in their claim, I dismiss the portions of each application for recovery of the filing fee.

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 23, 2010.

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Dispute Resolution Officer