

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security and pet deposit in partial satisfaction of the claim and a cross-application by the tenant for an order for the return of double her security and pet deposit. Both parties participated in the conference call hearing.

The landlord had entered into evidence a USB drive which apparently had video footage of the rental unit. A note on the file indicates that when the landlord submitted the drive to the Residential Tenancy Branch he was advised that unless he submitted an independent means of operating the drive, the evidence would not be considered. The landlord did not provide any means to view the drive and accordingly its contents were not viewed.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order for the return of double her deposits?

### Background, Evidence and Analysis

The tenancy began on June 1, 2008 and ended on or about October 6, 2009. At the outset of the tenancy the landlord collected a \$650.00 security deposit and a \$300.00 pet deposit from the tenant. The parties agreed that a condition inspection report was not completed at the beginning or at the end of the tenancy. The landlord claimed that he was unable to conduct an inspection with the tenant because she left without providing a forwarding address. The landlord acknowledged having received a forwarding address in writing from the tenant on October 25.

I address the parties' claims and my findings around each as follows.

Landlord's claims:

- [1] **Carpet cleaning.** The parties agreed that the landlord was entitled to recover \$257.25 spent cleaning carpets at the end of the tenancy. I award the landlord \$257.25.
- [2] **Cleaning.** The landlord seeks to recover \$160.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord presented a receipt showing that he paid \$160.00 to clean the unit. The landlord testified that the unit had not been adequately cleaned by the tenant and provided photographs. The photographs are unfocused and the images difficult to see, but it is possible to see that several cupboards had debris in them, the oven and stove required cleaning and the refrigerator needed to be cleaned. The tenant acknowledged that the oven needed to be cleaned but argued that the remainder of the unit was clean at the end of the tenancy. The tenant's witness testified that he helped her clean and that the unit was clean at the end of the tenancy. It is not possible to determine the condition of the rental unit from the photographs and the absence of a condition inspection report makes it even more difficult to make this determination. The landlord must prove his claim on the balance of probabilities and I find that the landlord has not proven that 4 hours of cleaning were required. I accept that the oven, the refrigerator and some of the cupboards required cleaning. I find that an award of \$60.00, which represents 1.5 hours of cleaning, will adequately compensate the landlord and I award him that sum.
- [3] **Lock changes.** The landlord seeks to recover \$53.73 as the cost of changing the locks to the rental unit. The landlord testified that the tenant was issued a total of 8 keys and returned only 3. The tenant denied having been issued 8 keys. In the absence of corroborating evidence, I find that the landlord has not proven on the balance of probabilities that the tenant was issued 8 keys and I therefore dismiss this claim.

[4] **Painting.** The landlord seeks to recover \$36.37 as the cost of purchasing paint and a further \$400.00 as the cost of labour to repaint the interior of the rental unit and the exterior steps. The landlord testified that the interior of the unit had last been painted just prior to the beginning of the tenancy and that the exterior steps were natural wood. The landlord testified that the tenant caused damage such as nail holes and scratches to the walls of the unit and that she painted the steps black, which he believed to be a safety hazard. The tenant testified that the unit was not freshly painted when she moved in and provided photographs showing that a number of the walls had nails or nail holes in them. The tenant testified that the exterior steps were rotting and that she stained them in order to preserve the raw, unfinished wood. Again, the landlord must prove his claim on the balance of probabilities. With respect to the interior paint, having viewed the tenant's photographs showing the condition of the unit at the start of the tenancy, it does not appear that the unit was freshly painted at that time and it is clear that nail holes were in the walls at the start of the tenancy. It is not possible from the evidence presented to determine whether all of the alleged damage to the walls pre-existed the tenancy or whether it occurred as a result of reasonable wear and tear. I therefore dismiss the claim for the cost of repainting the interior of the unit. While the landlord may have been aware that the tenant painted the stairs, I am not satisfied that the landlord gave her permission to do so. The tenant is responsible for returning the rental unit to the landlord in the same state and colours as it was at the start of the tenancy. I find that the landlord is entitled to recover the cost of repainting the stairs. The landlord's estimate from the professional painter is clearly an estimate for the cost of repainting the interior. I find that recovery of the \$36.37 paid to purchase paint from Home Depot will adequately compensate the landlord for the cost of repainting the stairs and I award the landlord \$36.37.

[5] **Light fixture replacement.** The landlord seeks to recover \$20.00 as the cost of replacing light fixtures in the rental unit. The landlord testified that two covers on a light fixture at the main entrance were missing at the end of the tenancy and had to be replaced. The tenant testified that the covers were missing at the start of the tenancy. The landlord did not perform a condition inspection report at the outset of

the tenancy as he was required to do under the Act and therefore has no record of whether the light covers were in place at that time. I find that the landlord has not proven on the balance of probabilities that the light covers were in place at the start of the tenancy and therefore I am unable to hold the tenant liable for their disappearance. I dismiss this claim.

- [6] **Utility charges.** The landlord seeks to recover \$60.32 in utility charges which he claims the tenant failed to pay during the tenancy. The parties agreed that the tenant was responsible to pay 60% of the hydro and gas charges for the unit. During the tenancy the landlord was in the practice of emailing the tenant or giving her notes and advising her of the amount owed. Both parties entered into evidence several utility bills, but neither party provided the full history of utility bills for the entire tenancy. In order to prove his claim, the landlord must prove the amount that he was charged by the service providers. Without the full history of utility bills, there is no way to determine whether the tenant has been paying the proper amount during the tenancy and it is further not possible to determine whether the tenant was in a credit or debit position at the end of the tenancy. For this reason I dismiss this claim.

- [7] **October rent.** The landlord seeks to recover \$1,300.00 in rent for the month of October. The parties agreed that in mid-September the tenant was served with a one month notice to end tenancy which listed an effective date of October 12. The tenant vacated the rental unit on October 6 pursuant to the notice to end tenancy. Under the Act, when a landlord serves a one month notice to end tenancy, it cannot take effect until the last day of the following rental period. In other words, a notice served in September cannot be effective until the last day of October. I find that the fact that the landlord stated on the notice that the tenancy would end on October 12 bars the landlord from claiming any rent after October 12 as there would be no tenancy after that date. Despite the tenant having vacated the rental unit on October 6, I find that the tenant was obligated to pay rent from October 1-12 and I award the landlord \$503.28 which represents 12 days at a rate of \$41.94 per day.

[8] **Blinds.** The landlord seeks to recover \$53.48 as the cost of replacing the blinds in one of the bedrooms of the unit. The landlord presented evidence showing that he paid \$53.48 to purchase a new blind. The landlord testified that the window had a blind at the beginning of the tenancy but that it was missing at the end of the tenancy. The landlord could not recall the age of the blind but testified that it was in good condition. The tenant at one point in her testimony denied having removed any blinds but at another point acknowledged that she had thrown away a blind. The tenant testified that some of the blinds in the unit were in extremely poor condition and that during the tenancy the landlord had agreed that the blinds needed to be replaced. I find that it is more likely than not that the tenant removed the blind. The landlord is not entitled to the replacement value of the blind, but to be compensated for what he lost, which was a used blind. In the absence of evidence as to the age of the blind, I find that \$15.00 will adequately compensate the landlord and I award him that sum.

[9] **Door repair.** The landlord seeks to recover \$50.00 as the estimated cost of repairing a door to the rental unit. The parties agreed that the previous tenants in the unit had a dog that caused damage to the door and further agreed that during the tenancy the landlord installed a metal plate on the lower part of the door. The landlord claimed that the tenant's dog scratched the door above the metal plate causing damage. The tenant provided a photograph of her dog and argued that her small dog, which appears to be the size of a Maltese or Shitzu, is too small to have created marks on the door as high as those shown in the landlord's photograph. As the previous tenants had a dog which the parties agreed caused damage and given the size of the tenant's dog, I am unable to find that the tenant's dog caused the damage to the door. I therefore dismiss the claim.

[10] **Alarm system box.** The landlord seeks to recover \$50.00 which is the estimated cost of repairing the box for the alarm system. The landlord testified that the box was in good condition at the beginning of the tenancy and that at the end of the tenancy, the wires were gone and it was found on the floor. The landlord provided a photograph showing a white and black object on the floor. The photograph is

unfocused and does not show further detail. The tenant denied having caused any damage to the box. The landlord did not provide an professional estimate of the cost of repairs and I find that the landlord has not proven that the tenant caused damage to the box or the cost of repairing it. I dismiss the claim.

[11] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. As the landlord has been partially successful in his claim I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

Tenant's claims:

[1] **Double security deposit.** The tenant seeks an award for the return of double her security and pet deposits. The tenant claimed that the landlord had her forwarding address prior to October 25 but provided evidence showing that the landlord was served with her address on October 25. The Act requires the landlord to make an application for dispute resolution within 15 days of the date he receives the tenant's written forwarding address. In this case, the landlord made his application on November 9, which was exactly 15 days after having received the address. I find that the landlord made his application within the statutorily prescribed timeframe and accordingly dismiss the tenant's claim.

[2] **Photocopy costs and filing fee.** The tenant seeks to recover the cost of photocopying her evidence for this hearing and the \$50.00 paid to bring this application. I am not empowered to award the cost of photocopying and as the tenant has been unsuccessful in her claim I find she must bear the cost of her filing fee. I dismiss the claim.

### Conclusion

In summary, the tenant's claim is dismissed in its entirety and the landlord has been successful in the following claims:

Carpet cleaning	\$257.25
Cleaning	\$ 60.00

Painting	\$ 36.37
Rent	\$503.28
Blind	\$ 15.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$921.90</b>

The landlord has established a claim for \$921.90. The landlord currently holds a \$625.00 security deposit and a \$300.00 pet deposit. Interest of \$8.33 has accrued on these deposits for a total of \$958.33 held to the credit of the tenant. I order that the landlord retain \$921.90 from the deposits in full satisfaction of the claim and I order the landlord to return the balance of \$36.43 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$36.43. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 09, 2010

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