

## **DECISION**

### **Dispute Codes**

Landlord's Application: MND, MNDC, MNR, MNSD, FF

Tenant's Application: MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for unpaid rent or utilities, for damage to the unit, for money owed or compensation for damage or loss, 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 tenant has applied for a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The landlord did not attend the hearing, but had an agent attend who stated that he had knowledge of the issues before me.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

### **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 a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

Is the tenant entitled to a monetary order for return of the security deposit?

## **Background and Evidence**

The parties agree that a fixed term tenancy agreement was entered into by the parties, which commenced on July 1, 2008 and expired on June 30, 2009. Thereafter the tenancy was based on a month-to-month tenancy. The tenancy ended on January 31, 2010.

Rent in the amount of \$2,850 was due on the 1<sup>st</sup> day of each month. The landlord collected a security deposit in the amount of \$1,425.00 as well as a pet damage deposit in the amount of \$1,425.00 from the tenant on June 12, 2008.

The landlord testified that the rent cheque provided by the tenant for the month of January, 2010 in the amount of \$2,850.00 was returned by the bank marked "NSF." The landlord phoned the tenant on January 11, 2010 and asked him to write another cheque, but the tenant refused, and advised verbally that he would be moving at the end of January, 2010. On or about January 18, 2010 the tenant paid \$1,425.00 and promised the balance would be paid soon. When the tenant returned the keys on January 31, 2010 he asked the landlord to deduct the amount owing from the security deposit. The landlord further testified that he made numerous attempts to collect from the tenant and to get a forwarding address for the tenant, without success.

The tenant testified that he asked the landlord to return the security deposit to the address on his business card, and subsequently gave the landlord a letter on February 16, 2010 which clearly sets out the forwarding address of the tenant.

A condition inspection was completed on February 9, 2010, but the tenant testified that he never did receive a copy of it.

The tenant made an application for dispute resolution claiming the return of the security deposit on February 19, 2010, and the landlord claimed against it on March 4, 2010.

The landlord is also claiming a list of damages for which he has provided no receipts. The tenant provided a cleaning receipt dated January 30, 2010 in the total amount of \$230.00 which proves that cleaning was done before he vacated. He also testified that

the photographs of the unit provided by the landlord are not dated, and ought not to be considered because they do not prove the condition of the unit when the tenant moved out. The landlord testified that the photographs were taken on February 19, 2010, after the tenant had vacated. The tenant also argues that the landlord collected double the amount of the security deposit that is permitted by law.

## **Analysis**

Firstly, dealing with the security deposit and pet damage deposit, the *Residential Tenancy Act* does permit the landlord to collect both a security deposit and pet damage deposit, if the tenant has or expects to have a pet. The amount of those deposits cannot exceed  $\frac{1}{2}$  of one month's rent each. Therefore, I find that the landlord has not collected double the amount permitted by law. However, the *Act* also states that the landlord can only claim against the pet damage deposit for damage caused by the pet, for which there is no evidence to support that.

The *Act* also requires that the tenant give a full month's notice to the landlord of the intention to vacate the rental unit, and that notice must be before the 1<sup>st</sup> of the month, if rent is payable on the 1<sup>st</sup> of the month, which I find it was. Therefore, the landlord is entitled to collect rent from the tenant for the month of February, 2010 in the amount of \$2,850.00.

I also find that the tenant failed to pay a full month's rent for the month of January, 2010 and owes \$1,425.00 for that month.

With respect to the security deposit and pet damage deposit, the *Act* states that the landlord cannot claim against it unless a condition inspection report is completed and a copy given to the tenant. The landlord's right to claim against those deposits is extinguished if the landlord fails to complete the condition inspection report and give the tenant a copy of it, which I find is the case here.

The *Act* further states that the landlord must return the security deposit and pet damage deposit within 15 days of the later of the date the tenancy ends and the date the tenant has provided his forwarding address in writing. If the landlord fails to return the deposits, the landlord must make an application for dispute resolution within that 15 day period or pay the tenant double the amount of those deposits. I find that the landlord was given the forwarding address in writing on February 16, 2010, and the landlord's application for dispute resolution was filed with the Residential Tenancy Branch on March 4, 2010, clearly in excess of the 15 days provided in the *Act*.

### **Conclusion**

For the reasons set out above, I find that the tenant owes the landlord \$1,425.00 for January's rent as well as \$2,850.00 for February's rent, for a total of \$4,275.00.

I further find that the landlord failed to return the security deposit and pet damage deposit, or apply for dispute resolution claiming against those deposits within the time allowed under the *Act*, and therefore owes the tenant double the amount of those deposits, for a total of \$5,700.00.

The landlord has failed to prove any damage claim against the tenant, and therefore the application of the landlord for damages is hereby dismissed without leave to reapply.

The landlord's application to retain the security deposit and pet damage deposit is extinguished under Section 38 of the *Residential Tenancy Act*, and therefore is hereby dismissed without leave to reapply.

I also order that the awards in favour of the landlord and the tenant should be offset from one another, and I grant the tenant a monetary order in the amount of \$1,425.00.

Since both parties have been partially successful in their claims, I decline to award recovery of the filing fee to either party.

This order may be filed in the Provincial Court of British Columbia 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 02, 2010.

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Dispute Resolution Officer