

## **DECISION**

### **Dispute Codes:**

MNSD, MNDC, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord and an application by the tenant.

**The Landlord** applied for dispute resolution on December 23, 2009 for;

- A Monetary Order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement comprised of: damages totalling \$2200.
- Order to retain the security deposit in partial satisfaction of the monetary claims.
- Recover filing fee - \$50.

**The Tenant** applied for dispute resolution on January 04, 2010 and amended on May 04, 2010 for:

- Return of the security deposit of \$625 and double the security deposit as per section 38 of the Residential Tenancy Act (the Act).
- A Monetary Order for compensation for damage or loss under the Act, Regulation or Tenancy agreement for \$4062.50, comprised of:
  - one month's rent for purported Landlord's Use of Property - \$1250
  - moving costs - \$315
  - 'Cancellation fee' for 'New Tenancy' - \$1150
  - Cancellation fee for post-dated cheques - \$97.50
  - Recover filing fee - \$50

Both parties attended the conference call hearing and participated with their submissions, sworn testimony and document evidence, and were permitted to ask

questions and attempt to settle all matters. The tenant's position was interpreted and advanced by the tenant's agent, due to the tenant's challenge with English.

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

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amounts claimed ?

### **Background and Evidence**

The following is undisputed. The tenancy began on May 01, 2009 as a fixed term tenancy with an end date of May 01, 2010. The tenant vacated November 28, 2009 – testifying they acted on a *letter* dated October 26, 2009 terminating the fixed term tenancy - given to them by the landlord for purportedly being in breach of the tenancy agreement for having a “pet”, contrary to a “no pets” clause. Rent in the amount of \$1250 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit of \$625 which the landlord still holds. Both parties performed a start of tenancy inspection and completed a report. The tenant and the landlord disagree on the provision of a copy to the tenant. An end of tenancy inspection was conducted by the parties, although the requisite report was not completed, or later forwarded to the tenant. During the end of tenancy inspection the parties did not come to a resolution respecting the disposition of the security deposit. The landlord subsequently received the tenant's request for the security deposit and forwarding address on December 10, 2009 - which the tenant does not dispute.

The parties provided an abundance of document evidence, including a copy of the tenancy agreement showing the respondent, and reportedly, their brother, as the landlord(s). Also, the original *breach/ termination of tenancy letter of October 26, 2009* was provided by the tenant. The landlord provided document and photographic evidence of the rental unit upon it being vacated, along with evidence of the landlord's mitigated costs for remediation of the damages to the unit.

**The tenant** testified that since the inception of the tenancy – after signing the tenancy agreement - they have conducted business of the tenancy with Rent cheques were made out to. The landlord's evidence of quotes for remediation costs are addressed to

The tenant testified that on October 26, 2009 the tenant received a letter from both landlords informing the tenants they were in breach of the fixed-term tenancy agreement, and therefore the landlords were terminating the tenancy, effective November 30, 2009. The letter was delivered, whom, the tenants purport, told them over the phone that he asked them to vacate for landlord's use. The attending landlord testified that his brother acted alone without his knowledge in issuing the tenants the letter terminating the tenancy, and that knows the letter was improper and later phoned the tenants and told them to disregard the letter ,and that the letter was not signed by the landlord, although his brother did deliver the letter to the tenants. The tenant testified that the landlord they conducted business with gave them the letter and that they were not confident of involvement in the tenancy. The tenant testified they acted on the landlord's letter and vacated the rental unit. The tenant claims they had to accept accommodations not to their preference due to the landlord's early termination of the fixed-term lease, and subsequently had to move again to more suitable accommodations. The tenant testified they soon learned the landlord terminated the tenancy without proper notice for cause or for landlord's use, and attempted to mitigate the landlord's claimed damages at the end of the tenancy. The tenant testified that at the end of tenancy inspection the landlord told the tenant to disregard any damages caused by the pet, and to, "just go".

The tenant is claiming compensation of one month's rent at \$1250, and another quantum of \$1150 – the amount they forfeited to terminate the second tenancy when they again moved to more preferable accommodations. The tenant claims moving costs for the initial move out on November 28, 2009. The tenant also claims bank fees to cancel the balance of the post-dated cheques from December 01, 2010 to April 01, 2010 (@\$12.50 each) in the adjusted amount of \$62.50.

**The landlord** testified that in their determination, the tenant vacated “voluntarily” after receiving the landlord’s purported *rogue* letter from the other landlord terminating the tenancy, because he then phoned the tenant and told them to disregard the letter. Therefore the tenant is in breach of the tenancy agreement. The landlord testified his expectation was that the tenants would then remain and honour the fixed term lease to its end. At the end of tenancy inspection the landlord claims they pointed out the damage purportedly caused by the pet and did not adjust or mitigate any amounts of money in exchange for any claimed misconduct on the part of the landlord.

The landlord claims recovery of costs solely for remediation of the rental unit in the amount of \$2200.

### **Analysis**

I have considered all evidence, all submissions to both claims, and have considered all testimony given in the hearing.

I find that the vast degree of contrast in the evidence is only partly the result of an apparent degree of miscommunication between the landlord and the tenant.

As to the tenants’ claim:

On preponderance of the evidence, I accept the tenant’s account of events to be their experience of the relevant facts in this matter. **I prefer** the tenant’s evidence and testimony that they acted in good faith and vacated the rental unit on the landlord’s improper notice to vacate given by the landlord, in the form of a letter terminating the tenancy for a purported breach of the tenancy agreement. The landlord’s letter was not a written notice to the tenant to correct a breach of a material term of the tenancy within a reasonable time; but rather, a *notice of termination of the tenancy* for breach of a clause *not* in the tenancy agreement. Under the Act, the landlord cannot end a fixed term tenancy early, except for a breach of a material term of the tenancy, with prior written notice to correct the breach; and on failure to correct the breach, utilizing the approved 1 Month Notice to End Tenancy for Cause. I find the tenant is entitled to compensation, and I grant the tenant their claim of one month’s rent in the amount of

**\$1250** without leave to reapply. I further grant the tenant a set **\$300** for nominal costs to move in respect to the landlord's breach of the tenancy agreement, without leave to reapply. I grant the tenant recovery of their costs to cancel post –dated cheques in the amount of **\$62.50** without leave to reapply. The tenant has not supported their claim for costs to move a second time, and I **dismiss** this portion of their claim without leave to reapply. The tenant is entitled to recovery of their filing fee of **\$50**. The tenant is not entitled to double the security deposit as the landlord filed for dispute resolution to retain the deposit within 15 days of receiving the tenant's forwarding address – as per section 38 of the Act.

As to the landlord's claim

On preponderance of the evidence, I accept the landlord's claim for damages to the unit in the amount of **\$2200**. The landlord is entitled to recovery of their filing fee of **\$50**.

The landlord's established claim	<b>\$2250.00</b>
----------------------------------	------------------

The tenant's established claim	<b>- \$1662.50</b>
--------------------------------	--------------------

---

<b>Tenant owes landlord</b>	<b>\$ 587.50</b>
-----------------------------	------------------

### **Conclusion**

I order the landlord retain \$587.50 of the security deposit held by the landlord, and return the balance of \$37.50 to the tenant, forthwith.

I grant the tenant a Monetary Order under section 67 of the Act for the amount of **\$37.50**. If necessary, 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*.