



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNR</u>	Monetary Order for Rent Owed
<u>MNSD</u>	The Return of the Security Deposit
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order to retain the security deposit for damages and loss and reimbursement for the cost of filing this application. The hearing was also convened to hear a cross-application by the tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, for the return of the security and pet damage deposit and reimbursement for the cost of filing this application.

The landlord did not appear at the hearing to present the landlord's case nor to defend against the tenant's claims. However, the tenant did appear and gave testimony.

Issues to be Decided for the Landlord's Application.

The issues to be determined for the landlord's application, based on the testimony and the evidence were whether the landlord was entitled to compensation under section 67 of the *Act* for the following:

- Rental arrears owed and loss of rent
- Liquidated damages under the tenancy agreement
- Other costs pursuant to *section 7* and *section 67* of the Act and
- To retain the security deposit and pet damage deposit in partial payment.

Issues to be Decided for the Tenant's Application

The issues to be determined on the tenant's application based on the testimony and the evidence were:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for a cheque of \$1,500.00 wrongfully cashed by the landlord after the tenancy had ended by proving that these damages were due to the actions of the landlord in violation of the Act or Agreement.
- Whether or not the tenant was entitled to the return of the security deposit of \$725.00 and pet damage deposit of \$725.00

For the landlord's application, the landlord has a burden of proof to prove all of the damages and losses and for the tenant's application, the tenant has the burden of proof to establish that damages and losses occurred for which the tenant should be compensated.

Background and Evidence

The tenancy began in January 2008 and the parties entered into a tenancy agreement with rent set at \$1,450.00 plus \$50.00 for heat. The tenant testified that a security deposit in the amount of \$725.00 and a pet damage deposit of \$725.00 were paid. The tenant testified that on February 21, 2010 they gave notice to move effective March 1, 2010. The tenant testified that the tenant then attempted to find a replacement tenant to take over the unit as of March 1, 2010, and had succeeded in finding interested parties, but found that these efforts were thwarted by the landlord who made it clear that nobody put forth by the tenants would be considered. The tenant testified that, as a result, they had no choice but to leave the matter up to the landlord to find a new tenant which was not done in time for March 1, 2010. The tenant acknowledged placing a stop-pay on the \$1,500.00 rent cheque for March 2010. According to the tenant, during the month of March 2010, the landlord took possession of the unit to do renovations in the bathroom.

The tenant denied causing any damages and pointed out that no move-in nor move-out condition inspection reports were ever completed by the landlord. The tenant stated that on April 1, 2010 after the tenancy had already ended and the landlord had possession of the unit, the landlord illegally cashed a \$1,500.00 cheque given by the tenant during the tenancy in advance to pay their rent for April 2010.

The tenant was seeking the return of the \$1,500.00 funds obtained by the landlord after the tenancy ended, the return of the \$725.00 security deposit, the \$725.00 pet damage deposit and \$50.00 for the cost of filing the application for a total of \$3,000.00.

Analysis – Landlord’s Application

The landlord’s application requested \$1,500.00 rent owed for March 2010, \$725.00 liquidated damages and to retain the \$725.00 security deposit and \$725.00 pet damage deposit as partial satisfaction for damages and the cost of the application. The total claim shown on the landlord’s application was for \$3,625.00.

In regards to an Applicant’s right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, however, the landlord did not attend the hearing and therefore could not meet the burden of proof to meet the criteria outlined above.. Accordingly, the landlord's application could not proceed and had to be dismissed.

Analysis – Tenant's Application

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; OR make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, I find that although the landlord made an application to retain the security and pet deposits, the landlord failed to attend and therefore did not provide proof that the tenant owed rent or damages for which the deposit could be retained by the landlord.

Accordingly, I find that the tenant is entitled to the return of these funds which were held in trust for the tenant in the amount of \$1,450.00 plus \$21.75 interest totalling \$1,471.75.

In regards to the tenant's claim for reimbursement for the cheque cashed by the landlord on April 1, 2010 after the tenancy had already ended on March 1, 2010, I find that the tenancy agreement had been ended and therefore without an active contract, the landlord had no right to seize any funds from the tenant or from the tenant's bank account without making a claim and obtaining an order to do so having proven

entitlement. Accordingly, I find that the tenant must be reimbursed \$1,500.00 by the landlord.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to a total monetary claim of \$3,021.75 comprised of the security deposit of \$725.00, pet damage deposit of \$725.00, interest on the deposits of \$21.75, \$1,500.00 return of funds for a cheque wrongfully cashed by the landlord after the tenancy had ended and the \$50.00 cost of the application. I hereby grant the tenant a monetary order for \$3,021.71. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

July, 2010

Date of Decision

Dispute Resolution Officer