

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a part of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- recovery of the landlord's filing fee for this application from the tenant pursuant to section 72.

Issues(s) to be Decided

Is the landlord entitled to a monetary order? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover her filing fees for this application?

Background and Evidence

The landlord testified that this fixed term tenancy commenced on September 1, 2009. The tenancy was scheduled to end on September 5, 2010. The tenants were to pay \$1,980.00 per month, payable on the first of each month. The landlord testified that she continued to hold the tenant's \$990.00 security deposit paid during the last week of August 2009.

The landlord testified that the tenant sent the landlord an electronic mail (email) request to end the tenancy early on April 9, 2010. The parties agreed to end the tenancy on May 15, 2010. The landlord testified that there was a mutual agreement whereby the tenant would end the tenancy early but would "forfeit" his damage deposit and be

responsible for one half month of rent in May 2010. The tenant disagreed that there was any mutual agreement in place to allow the landlord to keep his security deposit. The landlord provided no evidence of a written agreement regarding retention of the security deposit.

The landlord testified that she was able to rent the premises to another tenant commencing on May 15, 2010 for \$2,000.00 per month. The parties agreed that the landlord returned post-dated cheques to the tenant for June, July and August 2010. The parties also agreed that the landlord returned the tenant's \$990.00 cheque for half of the rental for May 2010. The landlord's agent took this action when he received \$1,000.00 from the new tenant for the period from May 15, 2010 until May 31, 2010.

The landlord testified that she received a May 21, 2010 registered letter from the tenant. In that letter, the tenant asked for the return of his security deposit to the return address he provided to the landlord. The tenant and his wife stated that they would pursue this matter through the provisions of the *Residential Tenancy Act* if the security deposit was not returned by the landlord. The landlord asserted that the tenant had waived his right to the return of the security deposit through the mutual agreement that they had reached before he vacated the rental premises.

The landlord applied for dispute resolution for authorization to retain all of the \$990.00 security deposit plus a monetary order for the following expenses she incurred as a result of this tenancy.

Item	Amount
Advertising Time Spent (2 hours @ \$100.00 per hr)	\$200.00
Reviewing and Responding to Applicants (4 hours @ \$100.00 per hr)	400.00
Showing the Property (4 hours @ \$100.00 per hr)	400.00
Reference Checking of Applicants (2 hours @ \$100.00 per hr)	200.00

Cleaning (8 hours)	240.00
Repair Tub (1 hour @ \$100.00 per hr)	100.00
Total Monetary Award Requested	\$1,540.00

The landlord and her agents testified that no move-in or move-out condition inspection reports were prepared for this tenancy. The landlord's agent testified that he did walk through the rental premises with the tenant when the tenant moved into the rental premises and took photographs of the condition of the premises at that time. The landlord and her agents submitted no photographs of the condition of the rental premises before or after the tenancy. They testified that they hired two cleaning staff to clean the rental unit and that they charged for eight hours of work. The landlord's agent testified that he caulked the tub to repair damage caused by the tenants. The landlord said that her request for \$100.00 for this item included an amount for supplied and materials. She provided no receipts for these expenses. Although the landlord's agents testified that the rental premises were left very dirty when the tenants moved out, they provided no photographs, condition inspection reports or receipts for the work done.

The landlord and her agents testified that their request to keep the security deposit was based on the expenses that they incurred to end the tenancy before the end of the fixed term tenancy agreement. The landlord's agent testified that there was no provision in the tenancy agreement for the retention of the tenant's security deposit if the tenant ended the tenancy agreement early. The landlord and her agents referred to a series of emails exchanged with the tenant but submitted none of this information into evidence.

The tenant and his wife testified that they never agreed to let the landlord keep the security deposit for this tenancy. They said that they cleaned the premises before they left and that they were available to conduct a joint move-out condition inspection on the day that they gave the landlord's agent the keys, but that the agents did not request an inspection. The tenants noted that no move-in or move-out condition inspection report was prepared or signed. Under these circumstances, they maintained that the landlord

had not complied with the requirements to return the security deposit to them. They asked for an order requiring the landlord return the security deposit.

Analysis

Landlord's Request for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the landlord, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I do not accept the landlord's application to recover the cost of re-renting these premises. I am satisfied that the landlord mitigated the losses from the early termination of this tenancy by renting out the tenant's rental premises for the remaining period of the fixed term tenancy. I note that the new lease resulted in a higher monthly rent for the landlord than she was receiving from the tenant. The landlord is not entitled to receive a monetary award for re-renting the premises and provided no receipts to substantiate any of her claims. .

I dismiss the landlord's application for damage caused to the premises by the tenant and for cleaning the rental premises after the tenants ended their tenancy. The landlord has not submitted sufficient evidence by way of signed move-in and move-out condition inspection reports, photographs before and after the tenancy, or receipts. The landlord has not met the standard required to issue a monetary award for any of her claimed expenses.

Landlord's Request to Retain Tenant's Security Deposit

Section 38 of the *Act* requires the landlord to return a tenant's security deposit within 15 days after the end of the tenancy and the date the landlord receives the tenant's forwarding address. The tenant and the landlord agree that the tenant submitted a written request by registered mail requesting that the landlord return the security deposit to the tenant at the return address provided in the registered letter. The landlord applied for dispute resolution under section 38(1)(d) of the *Act*.

The landlord has provided insufficient evidence to grant an order to be allowed to retain the tenant's security deposit. The landlord produced no evidence to confirm that there was a written agreement pursuant to section 38(4)(a) of the *Act* between the landlord and the tenant allowing the landlord to retain the tenant's security deposit. I dismiss the landlord's application to be allowed to retain a portion or all of the tenant's security deposit. Since the landlord's application to retain the security deposit has been dismissed, I attach a monetary order in the amount of \$990.00 in the tenant's favour for the return of the tenant's security deposit plus interest. No interest is payable over this period.

Landlord's Request for Recovery of Filing Fee

As the landlord's application has not been successful, I do not allow her recovery of her filing fee for this application from the tenant.

Conclusion

I dismiss the landlord's application for a monetary order and for recovery of the filing fee for this application. I dismiss the landlord's application to retain all or a portion of the tenant's security deposit. I grant the tenant a monetary order for \$990.00, the amount of his security deposit.

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial 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*.