

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with joint applications by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The tenant applied for the return of twice her security deposit from the landlord pursuant to section 38. The landlord applied for:

- a monetary order for damage and loss pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order pursuant to section 38;

Both parties applied for recovery of the filing fees for their applications pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent the landlord a copy of her application for dispute resolution by registered mail on June 14, 2010 and provided the Canada Post Tracking Number. The landlord confirmed that she received the tenant's application. I am satisfied that the tenant served the landlord with her application for dispute resolution in accordance with the *Act*.

The landlord testified that she sent the tenant a copy of her application for dispute resolution on May 25, 2010. She provided the Canada Post Tracking Number and a copy of the address used for Canada Post Delivery Confirmation. She testified that Canada Post returned her registered letter because the PO Box address was unknown. The tenant testified that she never received the landlord's application for dispute resolution, nor did she receive any notification from Canada Post that a registered letter was available for her at the post office. The tenant asserted that the landlord had used the incorrect postal code in the landlord's registered letter.

The landlord submitted written evidence from Canada Post that confirms that the landlord sent the registered mail containing the landlord's application for dispute resolution to the same mailing address (including the PO Box Number and the postal code) as was provided to her by the tenant on May 6, 2010. This mailing address matches completely with the mailing address provided by the tenant in her application for dispute resolution and confirmed at the hearing. According to the *Act*, service of an application for dispute resolution is deemed to have occurred five days after the mailing of that application by a registered letter to the respondent's mailing address. I am satisfied that the landlord served her application to the tenant in accordance with the *Act* and that I can consider the landlord's application.

Issues(s) to be Decided

Is the tenant entitled to receive a return of twice her security deposit from the landlord?
Is the landlord entitled to a monetary order? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of her monetary order? Are either of the parties entitled to the recovery of the filing fees for their applications?

Background and Evidence

The landlord testified that this tenancy commenced by way of a month-to-month written tenancy agreement on December 1, 2008. The tenant was to pay \$900.00 in rent on the first of each month. The landlord testified that she continued to hold the tenant's \$450.00 security deposit plus interest paid on November 24, 2008. The landlord confirmed that she sent the tenant a 2 Month Notice to End Tenancy that gave the tenant over 2 months to vacate the rental premises. The tenant testified that she vacated the premises on May 3, 2010. The landlord said that she received the keys from the tenant on May 4, 2010 at 4:00 p.m.

Background and Evidence - Tenant's Application for Return of Twice the Security Deposit

The tenant testified that she provided written notice of her forwarding address to the landlord on May 6, 2010 in her request for a return of her security deposit. The landlord testified that the tenant's written request was mailed to her on May 8, 2010 and that she received it on May 13, 2010. Since the landlord did not return her security deposit within fifteen days of being notified of the tenant's forwarding address the tenant applied for a return of twice the security deposit.

Analysis- Tenant's Application for Return of Twice the Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the security deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

I am satisfied that the landlord complied with section 38(1) of the *Act* by commencing a dispute resolution application claim against the tenant's security deposit on May 21, 2010, within 15 days of receiving the tenant's forwarding address. I find the tenant ineligible to receive a return of double her security deposit from the landlord under section 38(6)(b) of the *Act*.

Background and Evidence - Landlord's Claim for a Monetary Award

The landlord presented evidence that the tenant damaged the rental premises during her tenancy, primarily as a result of three flooding incidents in December 2008, April 23, 2010 and May 1, 2010. She said that one of these incidents involved flooding in the laundry area; the other incidents resulted from overflows from taps. The landlord and her husband testified that there was damage to plywood, insulation and underneath carpeting as a result of the tenant's actions. The landlord also applied for repairs to a

screen door, and painting that was required to repair the area damaged by the floods to the rental premises. The landlord submitted into evidence photographs of the condition of the items listed below in her request for a monetary order:

Item	Amount
Removal of Plywood and Insulation in Ceiling of Storage Room caused by Laundry Room Flooding	\$150.00
Replacement of Plywood and Insulation	150.00
Repair of Screen Door	155.00
Floor Paint and Supplies- Laundry Room	55.00
Preparing Floor in Laundry Room for Painting	60.00
Painting Floor in Laundry Room	60.00
Total Requested Monetary Award	\$630.00

The tenant testified that the flooding to the laundry area resulted from the landlord's failure to provide adequate heat to this area. The landlord noted that the tenant's written testimony was conflicting as to whether there was or was not heat in this area of the rental premises.

The tenant testified that the landlord's 2 Month Notice to End Tenancy stated that renovations were necessary to the kitchen, bathroom and other areas of the rental premises "as nothing has been done in these areas for 30 years." The landlord and her husband testified that they had not included any of these renovations in the landlord's application for a monetary order. They maintained that they limited their application to those specific repairs required as a result of the tenant's actions.

The tenant testified that no move-in condition inspection report was conducted when she commenced the tenancy. She also referred to a written statement prepared by the maintenance worker who repaired some of the flooding damage on April 23, 2010. She noted that this worker stated that "there were pre-existing conditions", that the "dryer was not vented properly" and that the mould on the carpet was excessive and most likely caused by the improper venting of the dryer. She testified that this area had not

been renovated in many years and indicated that she believed the repairs that the landlord was seeking through her application for a monetary award pre-dated her tenancy and resulted from normal wear and tear to the rental premises. The landlord testified that the dryer was installed correctly and that the tenant must have done something to the venting of the dryer if there were problems noted by the worker in April 2010. She noted that the worker's statement also included a note that the tenant had allowed the sink to overflow resulting in the saturation of the carpet and the underlay.

The parties agreed that they participated in a joint move-out condition inspection on May 3, 2010. The landlord testified that she provided the condition inspection report to the tenant on May 4, 2010 and asked her to carefully review its contents. She said that the tenant signed the inspection report. The tenant testified that the landlord had changed some of the items listed on the move-out inspection report after she signed it. She provided no alternate copy that she had retained to support her allegation.

Analysis – Landlord's Claim for a Monetary Award

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.

I accept that the move-out condition inspection report submitted by the landlord accurately reflects the condition of the premises when the tenant vacated the rental premises. I also accept the landlord's evidence regarding the cost of repairing the items listed in the landlord's request for a monetary order. It appears that the landlord has been very reasonable in limiting these costs to a minimum. However, the absence of a move-in condition inspection report and the tenant's written evidence from the worker

who viewed the damage, leaves uncertainty as to whether this damage had occurred by the time this tenancy commenced.

I issue a monetary award in the landlord's favour for damage caused to the rental premises by the tenant. In his award, I allow the landlord half her claimed costs for removal and replacement of the plywood and insulation. I do so because the landlord has not demonstrated to the extent necessary that the tenant was responsible for this damage to the rental premises. As set out below, I allow all of the other costs claimed by the landlord as I am satisfied by the evidence that these costs resulted from the tenant's actions.

Item	Amount
Removal of Plywood and Insulation in Ceiling of Storage Room caused by Laundry Room Flooding (\$150.00 x 50% = \$75.00)	\$75.00
Replacement of Plywood and Insulation (\$150.00 x 50% = \$75.00)	75.00
Repair of Screen Door	155.00
Floor Paint and Supplies- Laundry Room	55.00
Preparing Floor in Laundry Room for Painting	60.00
Painting Floor in Laundry Room	60.00
Less Security Deposit Plus Interest (\$450.00 + \$0.70 = \$450.70)	-450.70
Filing Fee	50.00
Total Requested Monetary Award	\$79.30

Conclusion

I dismiss the tenant's application to have the landlord return double the amount of her security deposit. As the tenant was not successful in her application, she is not entitled to recover her filing fee for her application.

I grant the landlord a monetary order in the amount of \$79.30. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of this monetary order. As

the landlord was successful in her application, I allow her to recover her filing fee for her application from the tenant.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.