

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, MND, FF

### **Introduction**

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

**The Tenant** applied for dispute resolution on April 22, 2010 for:

- Return of the security deposit of \$400.
- A Monetary Order for compensation for damage or loss under the Act, Regulation or Tenancy agreement for \$2350, comprised of:
  - ½ month rent X 4 months - total \$1350
  - Electrical Hydro - \$1000

**The Landlord** applied for dispute resolution on April 29, 2010 for;

- A Monetary Order to recover rental arrears, damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement comprised of *compensable* costs of \$1724.57:
  - Unpaid rent for portion of March (150), April (825) 2010 - \$975
  - Disposal costs - \$378
  - labour cost - \$200
  - cost for a stove range taken from rental unit - \$100
  - filing fee for this application - \$50
  - lock replacement - \$24.57

- Order to retain the security deposit in partial satisfaction of the monetary claims.

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

### **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 parties provided affirmed testimony. The following is undisputed. Rent in the amount of \$825 was payable in advance on the first day of each month as of November 01, 2009 for the rental unit – a house. At the outset of the tenancy the landlord collected a security deposit of \$400 which the landlord still holds. The parties had a verbal tenancy agreement. The tenant provided an *Intent to Rent* form dated December 03, 2009 indicating the effective date to be November 01, 2009 and that the rent would be \$825 per month. The tenant vacated April 22, 2010 without Notice to End the tenancy. There were no move in or move out inspections. The parties agreed that the tenant could move into the rental unit earlier than November 01, 2009, in exchange for the tenant doing some repairs or remediation of the rental unit. It is agreed that the month of October 2009, would be rent free in consideration of repairs by the tenant.

All other testimony and evidence is in dispute by the parties and widely contrasts.

Utilities are indicated on the Intent to rent form to be separate and at \$20 per month for Hydro – the landlord disputes that he wrote the utility information on the form, and that, “no house uses \$20 of utilities per month”. The tenant claims they actually moved in on October 17, 2009. The landlord claims the tenant actually moved in on September 15, 2009.

**The tenant** testified that the landlord was not truthful about the utilities costs for heating the rental unit – which the tenant claims amounted to \$1076.99 for the five months of

the tenancy. The tenant claims they knew the rental unit had no heating source and they replaced the stove to heat the rental unit for \$50. The tenant claims they incurred heating costs considerably above what they were advised, and want to be compensated. The tenant provided two witnesses, both claiming, under affirmation, that they witnessed the landlord signing the *Intent to Rent* form with the information that Hydro costs are \$20 per month. The tenant testified that repairs – in exchange for rent – grew to more than the rent portion for October 2009, and therefore want to be compensated for the cost of repairs above and beyond the cost reimbursed for flooring materials.

The tenant claims all rent, except rent for April was paid in full – \$675 by the Ministry of Children and Family Development and \$150 by the tenant. The tenant also claims that the landlord told them that they could leave all refuse and disposable items on the property, on vacating the rental unit, as he would eventually demolish the rental unit.

**The landlord** testified that he did not indicate to the tenant that utilities would only be \$20 per month. However, when the tenant presented the information that Hydro was running considerably more than \$20 per month, he waived their contribution of rent, of \$150 per month, for the first 4 months, or \$600. The landlord is claiming the tenant's portion of \$150 for March 2010, only. The landlord further testified, and provided document evidence, that the residential property was left strewn with belongings inside and out, and that the tenant had advised him that they would not be removing any of the items from the property upon vacating it. The landlord provided photographic evidence, two letters from the City citing the refuse on the property as unlawful, and an invoice for disposal services to remove the cast offs. The landlord disputes that he told the tenant they could leave the refuse behind – despite that the property will be demolished. He cited the letters from the City indicating that if he did not clean the property, the City would do it and charge him for the cleanup. The landlord disputes that the tenant paid for the stove – claiming he paid \$100 for the stove – which the tenant removed from the rental unit.

## **Analysis**

There is vast contrast in the evidence of the parties. None the less, I have considered all evidence, all submissions to both claims and have considered all testimony given in the hearing and a decision has been reached.

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 accept that the landlord agreed that any occupancy prior to November 01, 2009 would not incur rent. However, without agreement by the parties, there is no credible evidence pointing to an agreement for the landlord to reimburse the tenant for any and all repairs, as determined by the tenant. As a result, **I dismiss** the tenant's application for abatement of rent in compensation for the cost of repairs. However, I grant the tenant abatement of rent in the total amount of **\$300** for the lack of adequate heating for the rental unit.

On preponderance of the evidence, I prefer the evidence of the landlord - that he attempted to mitigate the cost of the Hydro utility, as presented to him by the tenant, by waiving the tenant's rent of \$150 per month up to the end of February 2010. I find no evidence upon which to base the parties agreed that utilities would be the responsibility of the landlord. Therefore, **I dismiss** the tenant's application for the cost of Electrical Hydro in the amount of \$1000, without leave to reapply. The tenant's total entitlement is for **\$300**.

As to the landlord's claim: On the preponderance of all the evidence advanced, I am satisfied the landlord is entitled to unpaid rent in the total amount of **\$975**. I find the landlord is also entitled to reimbursement for the cost of disposal of the tenant's cast offs and refuse, inclusive of labour, in the amount of **\$578**. The landlord has not proven his claim of \$100 for the stove (range) taken from the house, and I therefore **dismiss** this portion of their claim. I grant the landlord lock replacement costs of **\$24.75**. I note that mailing costs are not a compensable item under the Act.

As the landlord's application has merit, the landlord is therefore entitled to recovery of the filing fee from the tenants for the cost of this application in the amount of **\$50**. The landlord's total entitlement is for **\$1627.75**. As the landlord has established a claim amount greater than the tenant, I deduct the tenant's entitlement and **I grant** the landlord an award for the difference in the two entitlements in the amount of **\$1327.75**.

The **security deposit** will be off-set from the award made herein.

### **Conclusion**

**I Order** the landlord retains the security deposit of \$400 in partial satisfaction of the monetary claim entitlement, and I grant the landlord a Monetary Order under section 67 of the Act for the balance of **\$927.75**.

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*.