

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 requested, pursuant to section 38.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent the tenant a copy of her application for dispute resolution hearing package by registered mail on June 4, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served the application for dispute resolution to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss caused by the tenant during this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

### Background and Evidence

The landlord testified that this six-month fixed term tenancy commenced on June 1, 2008. She said that this converted to a month-to-month tenancy after the expiration of the initial fixed term of this tenancy. Rent was set at \$950.00 per month plus one third of the hydro cost. The landlord said that she continued to hold the tenant's \$475.00 security deposit paid on May 5, 2008. She applied for a monetary order of \$425.06 for damage and cleaning necessary when the tenant left on April 31, 2010.

The landlord submitted 134 photographs regarding the condition of the rental suite when the tenant vacated these premises. She testified that she spent five hours cleaning the rental unit and that she had to steam clean the carpets. She said that repairs were necessary to the Venetian blinds and to walls damaged by the tenant's cat. She asked that the monetary award be taken from the tenant's security deposit.

The landlord testified that the tenant attended and signed a move-in condition inspection report on May 7, 2008. She said that the tenant also attended a move-out condition inspection on April 31, 2010 and signed that report. She said that she intended to submit these signed reports to the Residential Tenancy Branch with her photographic evidence, but appeared to have overlooked doing so.

### Analysis

#### Monetary Order for Damage to Rental Premises

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.

While the landlord has provided extensive photographic evidence to support her claim for a monetary award from the tenant, she did not submit a copy of the move-in or move-out condition inspection reports. Without this information, it is difficult to determine whether the conditions shown in the landlord's photographs resulted from this tenancy or if this occurred before the tenant occupied this unit. However, I accept the landlord's undisputed evidence that the tenant did not conduct a proper cleaning of the rental premises at the end of her tenancy and that damage resulted from this tenancy. Based on the evidence presented, I allow the landlord a monetary award of \$150.00 to reflect her losses for repairs and cleaning required at the end of this tenancy.

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 in writing to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. The landlord testified that she applied for dispute resolution to retain a portion of the tenant's security deposit within 15 days of receiving written notification of the tenant's forwarding address on May 19, 2010.

I direct the landlord to retain \$150.00 of the tenant's security deposit to satisfy the monetary award issued in this decision. I order the landlord to return the remainder of this security deposit plus interest to the tenant.

Conclusion

I make a monetary Order in the tenant's favour of \$329.69 as set out below.

<b>Item</b>	<b>Amount</b>
Damage and Loss Resulting from Tenancy	\$150.00
Less Security Deposit plus Interest (\$475.00 + \$4.69 = \$479.69)	-479.69
<b>Total Monetary Order</b>	<b>(\$329.69)</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.