

## **DECISION**

Dispute Codes      MNDC MNSD MNR MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and or security deposit, for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail May 18, 2010. The Tenants confirmed receipt of the hearing packages.

The parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the parties entered into a written fixed term tenancy agreement effective August 1, 2009 which was set to expire on July 31, 2010 which could then continue on a month to month basis. Rent was payable on the first of each month in the amount of \$2,100.00 and the Tenants paid a security deposit of \$1,050.00 on July 31, 2009. A move-in inspection was completed on August 1, 2009 with all five Tenants signing the report and a move-out inspection was completed on April 30, 2010 in the presence of Tenant (1).

The Landlord presented his claim and took the position that the Tenants breached the fixed term tenancy in violation of section 45 (2) of the Act. He stated that the Landlord did not breach a material term of the Act therefore the Tenants could not rely on section 45 (3) of the Act. He provided opposing testimony in response to the Tenants' claims that the Landlord failed to provide contact information and contends that had the Tenants listened carefully to the Agent's voicemail they would have known how to reach

him. He stated the Landlord is entitled to the unpaid rent for the three remaining months of the fixed term in the amount of \$6,300.00 for the months of May, June, and July 2010 (3 x \$2,100.00).

The Landlord confirmed that he did not submit receipts in support of their claim for damages and asked that his submission be based on the credibility of his testimony for the following items:

- a) Carpet cleaning for the first floor in the amount of \$249.90, which was completed.
- b) Cleaning products purchased from a dollar store in the amount of \$17.80 and were used by the cleaning company that cleaned the rental unit.
- c) Appliance cleaning of \$175.00 that was completed.
- d) \$64.42 to replace the fridge drawer and shelf which were purchased from a retail outlet
- e) Registered mail costs to send the Tenants the evidence and hearing documents totalling \$101.30.

The Landlord would also like to request reimbursement for the following items. He confirmed these items have been repaired but not replaced and the Landlord will only consider replacing these items if the monetary claim is awarded to him. The following amounts are estimates of replacement value:

- a) Damaged linoleum \$434.00
- b) Interior doors that were damaged \$179.20
- c) Tap and shower head \$200.00

The Landlord confirmed that these issues surround the Tenants cancellation of the fixed term tenancy agreement. The Landlord did not fail to maintain the unit, the Landlord did provide contact information, and there was never any mention of a garbage issue until the Tenants submitted their evidence in defence of the Landlord's claim.

The Tenants who appeared at this hearing were all given the opportunity to provide testimony. It was their position that the Landlord had not followed through with providing them with a safe house. They all lived in Vancouver and were willing to carry their lease through the summer had the Landlord complied. They made several attempts to contact the Landlord and when those attempts failed they sent a letter to cancel their tenancy to the Landlord on February 28, 2010, via registered mail. A copy of this letter was also personally served to the Landlords on March 2, 2010. The Tenants vacated the rental unit on April 30, 2010. They confirmed they did not have a signed mutual agreement to end tenancy.

Tenant (2) was the only Tenant who received a copy of the written tenancy agreement in January 2010 and none of the Tenants received copies of either the move-in or move-out inspection reports.

Signatory (2) of the tenancy agreement confirmed that they were not aware that the Landlord would be requesting reimbursement of registered mail costs or that he would be requesting to amend his claim for the additional items that have not been replaced which are based on an estimate.

Signatory (1) of the tenancy agreement concluded that it was the Landlord who breached the tenancy agreement by failing to provide them with proper copies of the documents and for failing to provide updated contact information.

Just as the closing statements were ending the hearing time expired. I asked each participant if they felt the need to adjourn this hearing and reconvene at a future date. Each participant agreed that there was no need to reconvene the hearing and all agreed for me to put forth my decision based on the evidence and testimony before me.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants have breached section 45 (2) of the Act by ending the tenancy prior to the end of the fixed term period. In accordance with section 7 of the Act and number 4 listed above the Landlord is required to mitigate his loss. There is insufficient evidence before me to support that the Landlord took actions to mitigate his loss of the three month's rent being claimed. There is no testimony or evidence to support what attempts were made by the Landlord to re-rent this unit nor is there evidence or testimony which would support when this rental unit was re-rented. That being said there is insufficient evidence to verify the actual amount required to compensate for the alleged loss incurred by the Landlord. Therefore I dismiss the Landlord's claim of \$6,300.00 in unpaid rent.

The Landlord did not provide evidence to support that the damages being claimed caused him to suffer a loss. There is no copy of the move-in or move-out inspection report before me to support the condition of the rental unit at the onset and at the end of the tenancy, therefore there is insufficient proof that the damages were caused during the course of the tenancy. There are no receipts provided to prove the repairs were completed as claimed. The Landlord requested that I rely on the credibility of his verbal testimony to support his claim; however the Landlord failed to provide the dates these alleged repairs were completed, who completed them, the actual cost, and when the Landlord paid for the services.

In addition, the Landlord has requested to amend his application, without advising the Tenants prior to the hearing, for items that have not been replaced and therefore have not caused the Landlord to suffer a loss.

Based on the above, I find the Landlord has failed to provide sufficient evidence to prove the test for damage or loss and I hereby dismiss his claim for \$1,421.62 in damages.

The Landlord has not been successful with his application therefore I decline to award recovery of the filing fee.

Having dismissed the Landlord's claim above, the Landlord is not entitled to continue to hold the Tenants' security deposit in trust. Therefore the Landlord's is Ordered to return the full security deposit amount of \$1,050.00 plus interest of \$0.00.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

The Tenants' decision that is sent to Tenant (2) will be accompanied by a Monetary Order in the amount of **\$1,050.00**. This Order must be served on the respondent Landlord, or his Agent, and may be filed in 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*.

Dated: September 30, 2010.

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Dispute Resolution Officer