

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and for reimbursement of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an order for monetary relief?

### Background and Evidence

This tenancy began in December 2007, and ended on August 1, 2010. A security deposit in the amount of \$425.00 was paid in December 2007.

The tenant testified that she did not receive timely notice of the hearing for the Application for Dispute Resolution and only learned of the hearing when she called for information.

The landlord testified that he sent certified mail to the tenant on four occasions to the address she provided. I note that the address provided by the tenant was incomplete.

There was disputed testimony that the landlord offered the tenant 2 opportunities for a move out inspection, with the landlord saying he did not know the whereabouts of the tenant until sixteen days later, and the tenant testifying that she was the one asking for the inspection and that the landlord always knew how to contact her by mobile phone.

The landlord testified and submitted evidence of damage in the rental unit allegedly caused by the tenant and is seeking an order to retain the security deposit in partial satisfaction and for a monetary order over and above that amount for the balance.

When questioned, the landlord admitted there was no move in condition inspection performed with the tenant at the start of the tenancy in conformance with the Act.

The tenant denied damaging the rental unit as listed in the landlord's evidence, except for admitting to the two holes in the wall, costing \$40.00, and the scratches at the door, costing \$10.00. The tenant did not deny she failed to return the keys to the rental unit, and the amount charged by the landlord was \$25.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find it unnecessary to determine if the alleged damage to the rental unit was caused by the tenant. Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

The landlord testified that there was no move in condition inspection and there is no evidence before me that the landlord offered the tenant opportunities to complete the condition inspection. Therefore I find that the right of the landlord to claim against the deposit for damages is extinguished.

Pursuant to section 67 of the Act, I find that the Landlord has established a total monetary claim of **\$75.00** comprised of \$40.00 for the two holes in the wall, \$10.00 for the scratches at the door and \$25.00 for failure to return the keys to the rental unit at the end of the tenancy.

Further, section 72(2) of the Act provides:

*(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

*(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*

*(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

Pursuant to section 72(2) of the Act, I **order** that the landlord withhold the amount of **\$75.00** from the security deposit and interest of \$431.93 in satisfaction of the claim. I further **direct** that the landlord issue to the tenant the remaining balance of **\$356.93** within two weeks of this Decision to the corrected address.

I will not grant unto the landlord the filing fee for the Application for his non conformance with Section 23(3) of the Act.

### Conclusion

The landlord is entitled to withhold the amount of \$75.00 from the security deposit and interest and is directed to reimburse the tenant the remaining amount.

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: October 0, 2010.

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Dispute Resolution Officer