

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The tenant applied to recover double his security deposit from the landlord pursuant to section 38 of the *Act*. The landlord applied 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.

Both parties applied to recover their filing fees for their applications from the other party pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to call witnesses. The tenant testified that he sent the landlord a copy of his application for dispute resolution by registered mail on May 27, 2010. He provided the Canada Post Tracking Number to confirm this mailing. Although the landlord said that he had not received this mailing from the tenant, he said that he was prepared to proceed with the hearing. The landlord testified that he sent the tenant a copy of his application for dispute resolution by registered mail. The tenant confirmed receiving the landlord's application. I am satisfied that the parties served their applications for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a monetary Order from the landlord for double his security deposit plus interest? Is the landlord entitled to receive a monetary Order for loss incurred during this tenancy and for damage caused by the tenant? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested by the landlord? Are either of the parties entitled to recover the filing fees for their applications?

Background and Evidence

This month-to-month tenancy commenced on May 1, 2007. By the end of the tenancy, the tenant was paying monthly rent of \$850.00. The landlord testified that he continues to hold the tenant's \$425.00 security deposit plus interest, paid on May 1, 2007.

The landlord presented undisputed written evidence of the tenant's March 15, 2010 handwritten notice to end this tenancy on April 15, 2010. The parties agreed that the tenant attempted to vacate the premises by April 30, 2010, but remained in the rental premises cleaning the property until May 4, 2010. The parties agreed that the tenant provided written notice of his forwarding address to the landlord on May 13, 2010. A copy of this notice was entered into evidence by the landlord.

The tenant maintained that the landlord did not comply with the provisions of the *Act* in failing to return his security deposit plus interest within 15 days of receiving his forwarding address. The tenant requested a return of double his security deposit.

The parties agreed that the tenant overheld the rental premises beyond the end date for his tenancy. The tenant did not dispute the landlord's application for \$109.68 to compensate him for the first four days of rent for May 2010. The parties also agreed that the tenant's daughter(s) damaged the linoleum flooring in the upstairs bathroom with black hair dye requiring the replacement of this flooring. The tenant did not dispute the landlord's application for \$332.94 in compensation to replace this vinyl flooring.

The landlord also applied for \$1,200.00 in damage to the rental premises resulting from this tenancy and \$200.00 in damage to the carpets. He gave reference to written and photographic evidence submitted, noting that there were stains and paint drips on the carpet and a series of other damage caused by the tenant.

The landlord said that the rental premises could not be rented for May 2010, as the tenant remained in the premises at the beginning of May and repairs were necessary. He said that he advertised the premises for rent and showed the unit to a number of

prospective tenants, but could not rent it until July 2010. He applied for a monetary award of \$740.32 for the rental loss from May 5, 2010 until the end of May 2010.

Analysis

Tenant's Application to Obtain Return of Double his 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. 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)).

The landlord filed his application for dispute resolution on May 27, 2010, within the 15 day period for doing so. I dismiss the tenant's application to require the landlord to return double the tenant's security deposit to the tenant. For the reasons outlined below, I also dismiss the tenant's request for return of his security deposit plus interest.

Landlord's Application for a Monetary Order

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The claimant 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I issue a monetary award of \$332.94 for replacement of the flooring in the upstairs bathroom and \$109.68 for the tenant's overholding in the rental premises for four days in May 2010. I also issue a monetary award of \$740.32 for the landlord's loss of rent for May 2010 as I am satisfied by the landlord's evidence that the tenant's inability to vacate the rental premises by April 30, 2010 made the tenant responsible for the remainder of the May 2010 rent.

I have also considered the landlord's application for a monetary award of \$1,200.00 for repairs to the rental premises and \$200.00 in damage to the carpet. The landlord submitted a move-in condition inspection report completed jointly with the tenant at the commencement of this tenancy. The landlord provided undisputed testimony that he tried to arrange a joint move-out condition inspection with the tenant, but was unsuccessful in doing so. He submitted written evidence of his notes from his own inspection of the rental premises after the tenant vacated the rental unit, as well as one prepared by the owner of the property.

The landlord's black and white copies of photographs of the rental premises were of such poor quality that I give little weight to them. The tenant testified that the rental premises had not been updated when he moved in and the paint on the walls was "dingy." This testimony was supported by notes in the move-in condition inspection report confirming that many of the walls needed repainting at that time and the carpets were old. At that time, the tenant wrote on the move-in condition inspection report that "the place has had a lot use by a lot of tenants. There are plenty of signs of wear and tear everywhere." I also note that many of the repairs were performed by the landlord, and the cost estimates presented were for the most part quotes and not actual receipts.

The landlord did not satisfy the onus of demonstrating that the repairs and damage he was claiming were beyond the normal wear and tear that accumulated over the years to this rental unit. However, based on the evidence presented, I accept that the tenant is responsible for some damage that he did not repair fully before he vacated this tenancy.

In the attached monetary Order, I include an allowance of \$300.00 for the landlord's repairs to the rental premises and damage to the carpet.

I allow the landlord to recover the tenant's security deposit plus interest in partial satisfaction of the monetary award granted. As the landlord has been partially successful in his application, I allow him to recover the filing fee for his application from the tenant. I disallow the tenant's request for recovery of his filing fee.

Conclusion

I dismiss the tenant's application. I issue a monetary Order in the following terms, which allows the landlord to retain the tenant's security deposit plus interest and to recover the landlord's filing fee for his application:

Item	Amount
Overholding Fee May 1- May 4, 2010	\$109.68
Loss of Rent from May 5– May 31, 2010	740.32
Replacement of Vinyl Flooring	332.94
Repairs and Damage	300.00
Less Security Deposit Plus Interest (\$425.00 + \$10.72)	-435.72
Recovery of Landlord's Filing Fee	50.00
Total Monetary Order	\$1,097.22

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.