

## **DECISION**

### **Dispute Codes:**

**Landlord:** MNR, MND, MNSD and FF  
**Tenant:** MNDC, MNSD, OLC and FF

### **Introduction**

These applications were brought by both the landlords and the tenant.

By application of May 19, 2010, the landlord seeks a Monetary Order for repayment of previously waived rent, rent for the an overholding period, cleaning and painting of the rental unit, repairs and replacement of items removed by the tenant, yard clean up, unpaid hydro and recovery of the filing fee for this proceeding. The landlord also seeks authorization to retain the security deposit in set off.

By application of September 15, 2010, the tenant seeks a Monetary Order for return of her security deposit in double, credit for a hydro overpayment awarded at a previous hearing, and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

These applications require a decision on the merits of the claims submitted by both parties, taking into account whether damages are proven, whether they are attributable to the other party, which the amounts claimed are reasonable and allowed, and whether the parties have taken reasonable measures to minimize their losses.

## **Background, Evidence and Analysis**

This tenancy began on April 1, 2008 and ended on May 1, 2010. Rent was \$750 per month and the landlord holds a security deposit of \$375 paid on March 13, 2008.

The parties submitted copies of decisions following two previous hearings on this tenancy.

The first, dated February 9, 2010 resulted in a consent agreement in which the parties agreed that the tenant would vacate on April 30, 2010 and the landlord would waive the rent owed for March and April 2010, the tenant was allowed a deduction from a future utilities payment, and the landlord agreed to give written notice before attending the rental unit as required by the *Act*. The Dispute Resolution Officer granted an Order of Possession to perfect the consent agreement.

The second Decision dated April 23, 2010 dealt with a Notice to End Tenancy for unpaid utilities, the tenant's application for return of her security deposit and a dispute over utilities. The claims were all substantially dismissed. The Notice to End was moot as the landlord already had an Order of Possession effective April 30, 2010 and the issue over utilities had largely been resolved by the previous consent agreement, and the tenant's request with respect to the security deposit was premature.

In the present application, the parties submitted a number of claims, some overlapping, on which I find as follows:

**Repayment of Waived Rent - \$1,500.** The landlord makes claim that, because the tenant was one day late moving out, she was in breach of the consent agreement under which she was granted two months' free rent.

The landlord suffered no economic loss beyond the one-day rent as he was renovating the suite and there was no new tenancy set to begin. While I do not find that degree of overholding sufficient to warrant return of the waived rent, I do find that the landlord is entitled to the per diem rent for the extra day. The tenant agrees that the landlord is entitled to \$25 and I concur.

**Carpet cleaning - \$60.** The landlord makes this claim for the cost of renting a carpet cleaner and labour payment to a person engaged for cleaning the rental unit. The landlord noted that the cleaning was necessitated by the fact that the tenant had a cat and dog and that she smoked in the rental unit. That aside, it is standard practice for a tenant to have carpets cleaned at the conclusion of a tenancy and I find the amount claimed to be well below the customary charge. This claim is allowed in full.

**Cleaning and painting - \$150.** The landlord stated that there was substantial staining on the walls necessitating extra cleaning and paint touch up. The landlord stated that the unit had been painted two years before when the tenancy began. Standard depreciation tables place the useful life of interior paint in a rental unit at two years. For that reason, and taking into account some degree of normal wear and tear, I will allow one half of this claim which is \$75.

**Lawn mowing - \$140.** Under the rental agreement, the tenant was responsible for mowing the grass. The landlord stated that it was extremely long at the end of the tenancy and appeared not to have been cut for many weeks. Taking account of the fact that the tenancy ended at a time of year when many home owners are just beginning the post winter yard clean up, I will allow only half of this claim, \$70.

**Closet rod replacement - \$13.43.** The landlord stated that, at the end of the tenancy, a rod was missing from a closet which was in a common area, but exclusively used by the tenant. The tenant stated she had no knowledge of it. I prefer the evidence of the landlord and allow this claim in full.

**Replace outside faucets - \$60.43.** The landlord stated that at the end of the tenancy, two outdoor faucets were missing. The tenant stated that she had taken only one which she had replaced due to it leaking and which she removed at the end of the tenancy. I prefer the evidence of the landlord and this claim is allowed in full.

**Hydro - \$80.11.** The parties disagreed on the precise amount owed, but the landlord agreed to accept the tenant's lower calculation of \$78.49.

**Security deposit - (\$375).** The tenant makes claim for return of her security deposit in double under section 38(6) of the *Act* on the grounds that the landlord did not return it within 15 days as required under section 38(1). However, the tenant gave evidence that she had provided her forwarding address to the landlord on May 5, 2010. The landlord made application to claim upon it on May 19, 2010. Therefore, I find that the landlord made application on time and the tenant's request for return of the deposit in double is dismissed. In view of that, section 72(2)(b) of the *Act*, states that if the director's designate finds that a tenant owes an amount of money to the landlord, the designate may order that the landlord may retain the deposit in set off against the amount found owing. This provision supersedes the extinguishment provisions set out at section 36 of the *Act* imposed with respect to failures to conduct the move-out inspection.

**Filing fees - \$50.** Having found highly questionable claims in both applications to a degree that caused me to caution both parties on the principle of abuse of process and vexatious claims, I find that both parties should remain responsible for their own filing fees.

Thus, I find that accounts balance as follows:

<b>Award to Landlord</b>		
Overholding per diem	\$ 25.00	
Carpet cleaning	60.00	
General cleaning & painting	75.00	
Lawn mowing	70.00	
Closet rode replacement	13.43	
Replace outdoor faucets	60.43	
Hydro	78.49	
Sub total	\$382.35	\$382.35
<b>Tenant's Credits</b>		
Security deposit	\$375.00	
Interest (March 19, 2008 to date)	4.43	
	\$379.43	- 379.43
<b>Total remaining due to landlord</b>		<b>\$ 2.92</b>

## Conclusion

I hereby authorize and order that the landlord may retain the tenant's security deposit with interest in set off against the balance owed to him.

In addition to authorization to retain the security deposit, the tenant owes to the landlord an additional \$2.29. On noting the relatively insignificant difference between the security deposit and the amount owed, the landlord agreed to accept authorization to retain the security deposit with interest in settlement.

October 4, 2010