

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This is a cross application where the Landlord is seeking a monetary order for damage to the unit, to keep the security deposit and the recovery of the filing fee. The Tenant has also made an application for money owed or compensation for damage under the Act, regulation or tenancy agreement, the return of the security deposit and the recovery of the filing fee.

Both parties attended by conference call and gave affirmed testimony.

The Tenant states that he is only seeking the return of the security deposit and is not seeking a monetary order for compensation.

### Issues(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to keep the security deposit?

Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

According to the Tenancy Agreement filed by the Landlord, this tenancy began on January 26, 2010 for a fixed term of one year ending on January 26, 2011. The monthly rent is \$2,400.00 payable on the 25<sup>th</sup> day of each month. A security deposit of \$2,400.00 was made on January 19, 2010. Included is an addendum to the tenancy agreement which states that section 4 the security deposit sub section will not apply. The Tenant agreed to pay a full monthly rent of \$2,400.00 as a security deposit. The

Landlord states that the rental unit was a brand new unit and that the Tenant would be the first occupant of the new rental unit. The Landlord has not submitted any evidence of receipts or invoices for work/repair done to the rental unit. The only document submitted is a quote from a renovation company for painting, refinishing the wood floors and a professional cleaning of the suite. The Landlord has called a witness from this renovation company to address the issues of damage to the rental unit. According to the witness painting of the entire suite was carried out within a couple of days of the quote for painting and a professional cleaning. No receipts or invoices were submitted. The total cost according to the quote was \$1,425.00 plus tax. The witness could not provide any details of damage other than scratches to the floor area between the fireplace and window and that some sort of chemical was used to try and clean the ceiling leaving a discoloration. The witness stated that it is not possible to repair and match one piece of the floor with the rest without refinishing the entire floor. The Landlord has submitted a copy of the condition inspection report for the move-in and move-out. The Tenant points out that the Landlord did not sign this, but I note that the Tenant did sign the move-in portion of the report. The Tenant further states that he never received a copy of the move-in report at the beginning of tenancy. The Landlord has submitted a letter dated July 22, 2010 from the Tenant asking that ½ of the full month rent security deposit be applied to the August rent. No evidence of a response from the Landlord has been made. The Tenant has submitted a letter dated August 28, 2010 confirming that the Tenant vacated the rental unit and gave the forwarding address for the return of the security deposit.

The Landlord is making a claim for \$125.00 plus tax for a professional cleaning, \$1,300.00 plus tax for painting the rental unit. As per the witness, these two jobs were completed shortly after the end of tenancy. The Landlord is also seeking a claim of \$3,500.00 plus tax for refinishing the hardwood floor.

The Tenant disputes these costs but have not offered any evidence to dispute the costs incurred. The Tenant states that with the 13 pictures taken at the move-out date that the rental unit was left in good condition.

There has been no contention with the serving of hearing documents. Both parties have attended and agree that they have copies of evidence submitted by the other.

### Analysis

The Landlord has breached section 19(1) of the Act. A Landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement. By adding an addendum to the tenancy agreement that the Tenant agrees to this does not allow the Landlord to escape the Act. Section 19(2) of the Act says, if a Landlord accepts a security deposit or a pet deposit that is greater than the amount permitted under subsection (1), the Tenant may deduct the overpayment from rent or otherwise recover the overpayment. The Tenant in this case tried to have the Landlord apply the overpayment to the August rent, which is allowable, but also tried to have the other  $\frac{1}{2}$  of the security deposit applied to the August rent. This is only permissible if the Landlord consents. As there is no evidence of acceptance by the Landlord, I can only accept that the Landlord did not. The Condition Inspection Report for the move-out was not completed with the Tenant. I note that it is not possible to compare the 13 photographs filed by the Tenant with those of the Landlord's 7. The definition in the Tenant's photographs do not show enough detail to make out anything that would be comparable.

On a balance of probabilities, I find that the Landlord has established a claim for damages to the unit but has not provided any evidence of repair. The Landlord has only provided evidence in the form of 2 photographs that depict scratches to the wood of the rental unit and 1 photograph of what might be scratches to the face of a cabinet. The witness has stated that the painting and professional cleaning was carried out shortly after the end of tenancy. I accept the witness's testimony that the painting and cleaning took place. The Landlord has not yet refinished the wood floors. Based upon the evidence of the witness and the quote provided by the Landlord, I find that the Landlord is successful in her claim. This total covers the painting, cleaning and

refinishing as covered in the witnesses renovation quote. The Landlord has not established claims for anything else.

I order that the Landlord retain the \$2,400.00 security deposit in partial satisfaction of her claim. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order under section 67 for the balance due of \$2,575.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

In finding for the Landlord, I dismiss the Tenant's claim for the return of the security deposit.

### Conclusion

The Landlord is granted a monetary order for \$2,575.00.

The Landlord may retain the security deposit.

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: November 09, 2010.

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Dispute Resolution Officer