

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This is an application by the Landlord for a monetary order for damage to the unit, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. Both parties attended by conference call and gave affirmed testimony.

### Issues(s) to be Decided

Is the Landlord entitled to a monetary order?

### Background and Evidence

This tenancy began as indicated on the signed tenancy agreement on July 1, 2010 on a fixed term tenancy for 1 year ending on June 30, 2011. The monthly rent was \$950.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$475.00 was paid on June 7, 2010.

The Landlord has submitted evidence in written form showing a mutual agreement to end tenancy which has been signed by both parties. This agreement signed on August 15, 2010 with an end to tenancy date of August 31, 2010. The Landlord has put forth two letters, one dated August 21, 2010 and the other on August 28, 2010 to the Tenant requesting to schedule a move-out condition inspection report at the end of the tenancy. A 1pm inspection time was first offered by the Landlord, but the Tenant was unable to confirm this time. The second attempt was to be scheduled at 5pm. On August 30, 2010, the Tenant responded with a note that the Tenant was still not able to confirm the inspection time. The Landlord stated that after not being able to schedule 2 previous attempts for a move-out inspection time, she completed a notice of final opportunity to schedule a condition inspection report. This notice specified a scheduled inspection

time at 7pm on August 31, 2010 to accommodate the Tenant's need for more time. The Landlord was advised that the Tenant could not attend the scheduled inspection. The Landlord notified the Tenant that if the Tenant could not attend, then a third party could conduct the inspection on the Tenant's behalf or the third option would be for the Landlord to conduct the inspection without the Tenant's attendance. The Landlord conducted the inspection without the Tenant. The Landlord has submitted the condition inspection report for the move-in, done with the Tenant with the move-out inspection conducted without the Tenant's presence. The condition inspection report indicates that all categories of the move-in inspection were satisfactory. The move-out portion of the inspection note bad scuffing on walls throughout the rental unit as well as badly scratched countertops. The Tenant has conceded that carpet cleaning was not done and that a glass shelf from the refrigerator was removed and disposed of by her movers in error. The Tenant indicated during the hearing that the Landlord was going to paint the rental unit at the beginning of the Tenancy, but did not at the request of the Tenant. The Landlord's statement of damages and repairs with total hard costs including an estimate for the replacement of the glass refrigerator shelf for \$230.87 and labour costs of \$340.00 for 17 hours of labour.

### Analysis

As both parties attended the conference call hearing and have both stated that evidence packages have been received, I find that the hearing documents were properly served and I am satisfied that both parties were properly notified and prepared to conduct the hearing.

The Act specifies under section 35 (1) The Landlord and Tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit (a) on or after the day the Tenant ceases to occupy the rental unit, or (b) on another mutually agreed day. (2) The Landlord must offer the Tenant at least 2 opportunities, as prescribed, for the inspection. It further goes to section 35 (5) The Landlord may make the inspection and complete the report without the Tenant if (a) the Landlord has

complied with subsection (2) and the Tenant does not participate on either occasion, or (b) the Tenant has abandoned the rental unit.

Based upon the above facts, the Landlord has complied with section 35 (2) and has without the Tenant's participation undertaken the actions in subsection (5).

Section 36 (1) The right of a Tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if (a) the Landlord complied with section 35 (2), and (b) the Tenant has not participated on either occasion.

Again I find that the Landlord has complied with the Act and that the Tenant's right for the return of the security deposit is extinguished.

As to the claims of damage by the Landlord, although no physical evidence of photographs or third party witnesses have been given, I find that the condition inspection report details for the move-in and move-out are too different to ignore. The report on the move-in inspection clearly shows that no damage is evident and that all categories indicated show satisfactory and not new or pristine as the Tenant has disputed. The Tenant did not dispute that any of the damage was evident, but that it was the result of the previous Tenant. In this I find that the Landlord's dispute is more credible and find that the Landlord has established a claim for damage. As noted in the evidence the Tenant has conceded the costs for the replacement of the carpet cleaning and the replacement of the refrigerator glass shelf. I do however note that the rental unit was not painted at the beginning of tenancy by the Landlord at the Tenant's request and will credit the Landlord's 8 hours of labour for painting the unit to offset this credit. That credit will be 8 hours at \$20.00 per hour to equal \$160.00.

I find that the Landlord has established a claim for \$410.87. The Landlord is also entitled in being successful in her application to the recovery of the \$50.00 filing fee. I order that the Landlord retain \$460.87 from the security deposit in satisfaction of this claim and return \$14.13 to the Tenant.

Conclusion

The Landlord may retain \$460.87 from the security deposit and return \$14.13 to the Tenant.

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 25, 2010.

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Dispute Resolution Officer