



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks a Monetary Order for the return of his security deposit and to recover his filing fee. The landlord seeks a Monetary Order for damage to the rental unit, site or property, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord also seeks an Order to keep the tenants security deposit and to recover his filing fee.

The tenant served the landlord in person on June 25, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant in person on July 03, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The hearing that was originally scheduled to be heard on November 03, 2010 was adjourned as the landlords evidence had not been received by either the Dispute Resolution Officer or the tenant. The hearing was reconvened to today's date. The landlord did not provide any evidence.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to the return of his security deposit?



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- Is the landlord entitled to a Monetary Order for damage to the rental unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on June 30, 2009. Both parties also agree that no move in or move out condition inspections were carried out at the beginning and end of the tenancy.

The tenant states he has a written tenancy agreement with the landlord in which it states this was a fixed term tenancy for one year with a monthly rent of \$875.00 due on the first of each month. The tenant also states he paid as security deposit of \$450.00 before he moved into the unit on June 30, 2009. The landlord states he does not think that they had a written tenancy agreement and he does not recall how much rent the tenant paid each month. The landlord also states he does not recall the tenant paying a security deposit. The tenant has provided a copy of the tenancy agreement which shows rent is \$875.00 and he paid a security deposit of \$450.00.

The tenant seeks to recover his security deposit as this has not been returned to him at the end of the tenancy. The tenant stated at the original hearing that he had not given the landlord his forwarding address in writing but declared at that hearing that the address on his Application is his forwarding address. It was deemed at that hearing that the landlord had received the tenants forwarding address.

The tenant also states he made an overpayment of \$5.00 on his rent for May as the landlord did not have any change to give him. He seeks to recover this sum also.

The tenant seeks to recover his \$50.00 filing fee.



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The landlord disputes that the tenant paid a security deposit as the rental unit was in a terrible condition at the start of the tenancy and he would not have charged a security deposit. The landlord also disputes that he owes the tenant \$5.00 in overpayment of rent.

The landlord seeks to recover \$624.02 for damage to the rental unit. The landlord states that the tenant left the rental unit in bad condition at the end of his tenancy. He states the carpet was destroyed by urine and the tenant had moved a dryer outlet causing damage to the outlet and wall.

The landlord also seeks to recover the sum of \$150.00 for the use of his truck having to take the tenants garbage to the dump and an additional \$58.00 in dump fees.

The tenant submissions state the house was run down at the start of his tenancy and he offered to paint it for the landlord. He claims the landlord did work on the drywall and the tenant painted the interior areas with the exception of the kitchen and bathroom. The tenant claims this delayed his move in date until July, 2009. The tenant claims the landlord eventually reroofed the property but failed to finish the soffits, fascias and gutters. The landlord had agreed to level and grass the back yard but failed to do this work also. The tenant claims the landlord said he would build a door for the crawl space which he failed to do.

The tenant states that as his lease was coming to an end the landlord wanted to increase his rent from \$875.00 per month to \$950.00 per month. The tenant decided to move out and claims in his submissions that the landlord agreed to let him out of his lease a month early. The tenant claims he repaired some dry wall damaged from water leaking from the roof and paid a professional cleaner to clean the house. The tenant claims he also cleaned the carpets with an industrial strength carpet cleaner. The tenant claims the house was left in a better condition than when he rented it.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for the return of his security deposit, I find the landlord has stated that the tenant did not pay a security deposit however; I can base little weight on the landlords' argument as in his application he has applied to keep the security deposit and the tenant has provided a copy of the tenancy agreement which has been signed by the landlord. Therefore, it is my decision that a security deposit of \$450.00 was paid by the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished. Consequently the tenant is entitled to a Monetary Order to recover his security deposit of **\$450.00** from the landlord pursuant to section 38 of the *Act*.

With regard to the tenants' claim for \$5.00 for an overpayment of rent; The landlord disputes this and I find the tenant has provided no evidence to support his claim that he did overpay the landlord consequently this section of his claim is dismissed.

With regard to the landlords claim for damages to the rental unit, site or property; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.



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I find that the landlords claim for damages or compensation for money owed does not meet the burden of proof. The landlord has not submitted any evidence to support his claim of \$624.02 and his claim is therefore dismissed.

As the tenant has been largely successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND largely in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$500.00** comprised of his security deposit and filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: December 01, 2010.

Dispute Resolution Officer