

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with applications by the landlord and tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for an order requiring the landlord to return their security deposit to them pursuant to section 38 of the *Act*. The tenants confirmed receiving the landlord's July 16, 2010 registered mail containing the landlord's application for dispute resolution. The landlord confirmed receiving the tenants' July 25, 2010 registered letter containing the tenants' application for dispute resolution. I am satisfied that both parties served one another with these documents and written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or loss arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Who is entitled to the tenants' security deposit? Is the landlord entitled to recover her filing fee for this application?

Background and Evidence

The tenants commenced living at the rental premises on January 15, 2009, on the basis of their one-year fixed term tenancy agreement. After the fixed term residential tenancy agreement expired in January 2010, the tenants continued living there on a month-to-month tenancy. Their monthly rent was set at \$1,200.00, payable on the first of each

month. The landlord testified that she continues to hold the tenants' \$600.00 security deposit paid on or about January 15, 2009.

During the course of this tenancy, the parties testified that they communicated by email, as the tenants were not provided with the landlord's mailing address. The tenants testified that they communicated with the landlord in March 2010, with respect to their intent to vacate the rental unit. The tenants provided copies of emails that recorded the landlord's attempt to determine when the tenants planned to vacate the rental unit. The tenants testified that they phoned the landlord a number of times late in April and on the first of May, 2010. They submitted a copy of an email they sent to the landlord which the parties agree was the tenants' written notice to end this tenancy for June 1, 2010. In their email, the female tenant advised the landlord that the tenants had been successful in finding alternate accommodations for June 1, 2010. Although the female tenant said that this email was actually sent on May 1, 2010, the email was dated May 2, 2010 at 1:18 a.m. The female tenant testified that she encounters errors with her email server in the dates and times on emails sent. The landlord testified that she did not receive and review their email until May 2 or 3, 2010.

The male tenant testified that some of the tenants' contents remained in the rental unit until June 3, 2010, although they were living at their new location by June 1. He said that all of their contents were removed from the rental unit on June 4, 2010, at which time by mutual agreement they left the keys with a neighbour in the same complex. The landlord said that she gained access to the rental unit on June 5, 2010, after picking up the keys from the neighbour.

The tenants could not identify any specific email where they provided their forwarding address to the landlord prior to their June 27, 2010 email. The landlord confirmed receiving the tenants' June 27, 2010 email.

The landlord filed for dispute resolution on July 16, 2010, although she testified that she dated her application June 16, 2010 by mistake. In her application for dispute resolution, the landlord applied for a monetary award of \$1,545.00 and permission to

retain all of the tenants' security deposit in partial satisfaction of that requested award. The landlord identified unpaid rent of \$1,200.00 for the month of June 2010, and various losses and damage to the rental unit (i.e., steam cleaning required at the end of this tenancy, damage to a mirror, and \$75.00 in fines issued by the strata council for parking infractions attributed to the tenants). The tenants requested a return of their security deposit in their application.

Analysis

While I have turned my mind to all the documentary evidence, including invoices, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

I find that the tenants did not provide a full month's written notice to the landlord of their end to this tenancy by June 1, 2010. Even if they did provide such notice, both parties testified that the tenants did not give vacant possession of the rental premises and return their keys until June 3, 2010. As such, I find that the landlord is entitled to a monetary award of \$1,200.00 for unpaid rent for June 2010.

In considering the landlord's claim for a monetary award for damage arising out of this tenancy, I note that no report was prepared of the joint condition inspection conducted when the tenants moved into the rental premises. The landlord testified that she tried to arrange for a joint move-out inspection with the tenants, but had to conduct the inspection after the tenants left. The landlord testified that she did not prepare or send the tenants a move-out condition inspection report.

The landlord applied for a monetary award of \$200.00 to replace a mirror damaged during this tenancy. The tenants testified that there was a crack in the mirror when they moved into the rental unit. Without move-in, move-out condition inspection reports or photographs, I dismiss the landlord's claim for a monetary award for this item.

The male tenant testified that the tenants did not steam clean the carpets as required at the end of this tenancy. The landlord submitted a \$201.60 paid invoice for cleaning that occurred on September 18, 2010. The tenants noted that this cleaning happened over

3 months after they vacated the rental unit and questioned the lack of information on the invoice submitted by the landlord. I allow the landlord a monetary award of \$100.80 to conduct cleaning in the rental unit, representing half of the landlord's claim for this item. I find this amount appropriate, given the delay in the landlord's attendance to this item.

The landlord provided a copy of a bylaw/rule violation notice of a \$50.00 fine issued by the strata manager for parking of a vehicle on February 21, 2010. She said that she could not locate a second notice advising her of a \$25.00 fine. She asked for a monetary award of \$75.00 in fines she attributed to the tenants or their guests. The tenants gave sworn testimony that the vehicle that generated the fine(s) was not theirs and was not one of their guests. I dismiss the landlord's application for a monetary award for \$75.00 in fines levied by the landlord's strata council. This would appear to be a matter that the landlord would need to address with her strata council.

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 writing, to either return the deposit or file an Application for Dispute Resolution asking to be allowed 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)). With respect to the return of the security deposit the triggering event is the tenant's provision of the forwarding address.

The landlord seeks to retain the deposit in partial satisfaction of her claim for loss of rent and damage to the rental premises. I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address in writing. The tenant is therefore entitled to a monetary award amounting to double the deposit with interest. No interest is payable over this period.

I make no order regarding recovery of filing fees.

Conclusion

I grant a monetary Order in the landlord's favour of \$100.80 on the following terms;

Item	Amount
Unpaid June 2010 Rent	\$1,200.00
Cleaning	100.80
Less 2 Times Security Deposit (2 x \$600.00 = \$1,200.00)	-1,200.00
Total Monetary Order	\$100.80

This Order allows the landlord to recover \$1,200.00 in unpaid rent for June 2010 and half of her cleaning expenses. This Order also allows the tenants to recover twice the amount of their security deposit.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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.

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*.