

DECISION

Dispute Codes MND, MNSD, MNDC, FF,

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's pet damage and security deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and

The tenant applied for authorization to obtain a return of double her pet damage and security deposits pursuant to section 38. Both parties applied under section 72 of the *Act* to recover their filing fees for their applications from one another.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit? Is the landlord entitled to a monetary award for losses arising out of the tenant's ending of this tenancy prior to the scheduled termination date of their fixed term tenancy agreement? Which of the parties are entitled to monetary awards for the tenant's pet damage and security deposits? Is either party entitled to recover their filing fees for this application?

Background and Evidence

This one-year fixed term tenancy commenced on January 20, 2010. According to the fixed term tenancy agreement entered into written evidence, this tenancy was to end on January 31, 2011. Monthly rent was set at \$2,250.00, payable on the first of each month. The landlord continues to hold the tenant's \$1,125.00 security deposit and \$1,125.00 pet damage deposit paid on or about January 19, 2010.

The parties confirmed that the tenant and the landlord's agent conducted a joint condition inspection at the beginning of this tenancy. No condition inspection report was produced. The parties agreed that the rental unit was new, in good condition and that no one had lived in this rental unit prior to the tenant. The parties confirmed that the landlord and the tenant conducted a move-out condition inspection on the day that the tenant vacated the rental unit. The landlord testified that no condition inspection report was produced nor provided by the landlord to the tenant.

The landlord submitted five photographs of damage he attributed to the tenant's dog. While the tenant received photographs of this damage, the landlord faxed his photographs to the Residential Tenancy Branch. The faxed photographs were of very poor quality and revealed nothing of value to this hearing.

At one point in the hearing, the landlord testified that the tenant vacated the rental premises at the end of March 2010, after paying rent for February and March 2010. Later, and after questioning by the tenant's counsel, the landlord testified that he erred in his previous testimony and agreed with the tenant's assertion that she vacated the rental unit at the end of April 2010, after paying rent for February, March and April 2010.

The landlord said that he started advertising the rental unit to mitigate the tenant's losses through a rental agent when he was certain the tenant was ending her tenancy. He said that the rental agent advertised the rental premises on the rental agent's website, in a community newspaper and on Craigslist.

Since there was a glut of high rental properties on the rental market immediately following the Winter Olympics, the landlord said that he was only able to rent the unit for \$2,050.00 per month. He said that he allowed the new tenant to take possession of the rental unit on May 15, 2010, fifteen days before the first rent cheque would be due. He said that this was the same arrangement that he had entered into with the tenant who did not commence paying her rent until February 1, 2010.

The landlord testified that his rental unit was empty for two weeks in May 2010. He said that he did not receive any rent for May 2010. He also applied for 8 ½ months of losses due to the reduction in rent he received from the new tenants for the duration of this fixed term tenancy. The landlord calculated these losses at \$150.00 per month, for a total of \$1,275.00.

The landlord also applied for a reimbursement of the \$1,125.00 he had paid his rental agent for the rental of this property to the tenant. He applied for a monetary award of \$600.00 for significant scratch marks to the hardwood floors he attributed to the tenant's dog. He said that he recently learned that it might cost as much as \$1,500.00 to repair the damage caused to the hardwood floors. In total, the landlord applied for a monetary award of \$4,125.00.

The tenant applied for double the \$2,250.00 she paid for her pet damage and security deposits. She did so because she maintained that the landlord had not complied with provisions of the *Act*. In total, the tenant applied for a monetary award of \$4,550.00, which included the recovery of her filing fee for her application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

Landlord's Claim for Losses Arising Out of this Tenancy

There is undisputed written evidence that the tenant signed a fixed term tenancy agreement that committed her to pay \$2,250.00 in monthly rent to the landlord until January 31, 2011. The tenant paid this rent for three months, but vacated the rental unit by May 1, 2010. In accordance with section 7(1) of the *Act*, the tenant remained responsible for compensating the landlord for his losses as a result of the tenant's early termination of this fixed term tenancy. However, section 7(2) of the *Act* requires that the landlord "must do whatever is reasonable to minimize the damage or loss."

I accept the landlord's testimony that he promptly retained a rental agent to re-rent this unit so as to minimize the tenant's losses. I accept the landlord's testimony that he had to accept less rent for this rental unit immediately following the Winter Olympics. Based on his sworn testimony, I accept that he did not receive any rent for May 2010, although a tenant did move into the rental unit in mid-May. I allow the landlord a monetary award of \$2,250.00, for the loss the landlord incurred for May 2010.

I also accept as credible the landlord's evidence that he entered into a residential tenancy agreement in which he would receive lower rent from June 2010 until January 2011, when the tenant's fixed term tenancy agreement was to have ended. Although he testified that he is now receiving \$2,050.00 each month instead of \$2,250.00 in the tenant's fixed term tenancy agreement, he also said that he expects to lose \$150.00 for each month until January 31, 2011. As the landlord has not provided a copy of his new residential tenancy agreement with the new tenants and there is inconsistency between the figures he provided, I allow the landlord a monetary award of only his requested \$150.00 per month from June 1, 2010 until January 31, 2011, an eight month period. In total, I allow a monetary award for these months of \$1,200.00 (i.e., 8 x \$150.00).

I dismiss the landlord's claim for a monetary award of \$1,125.00 for fees that he paid the rental agent in January 2010 for the original lease of these premises to the tenant. I do so because he committed to pay the rental agent, whether or not the tenant fulfilled

the obligations of the fixed term tenancy agreement. The landlord has not submitted any evidence of additional costs incurred for the re-renting of the premises to another tenant, and as such I make no monetary award in that regard. I also dismiss any other monetary award to the landlord.

Landlord's Claim for Damage to the Rental Unit and Tenant's Application for Return of Pet Damage and Security Deposits

The tenant's counsel questioned the November 25, 2010 date on the back of the landlord's photographs. At one point in his oral testimony, the landlord said that these photographs had to be taken after the subsequent tenant who rented the premises had been occupying the rental unit for some time. Later in his testimony, the landlord said that the photographs were developed on November 25, 2010, and were taken approximately 10 days after the tenant vacated the rental premises. I attach little weight to the landlord's photographic evidence given the inconsistencies in the landlord's testimony regarding when the photographs were taken and the very poor quality of the photographs submitted to the Residential Tenancy Branch.

The parties agree that this tenancy was for a new rental unit that had never been lived in by anyone prior to this tenancy. Under these circumstances, the landlord's failure to provide a move-in condition inspection report to the tenant is not critical. However, the parties disagree regarding the condition of the rental unit when the tenant vacated the premises, a few months later. The landlord's failure to prepare a move-out condition inspection report and provide a copy of that report to the tenant is contrary to section subsection 36(2)(c) of the *Act*, which reads in part as follows:

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

The parties agreed that the tenant did not provide written notice of her intent to vacate the rental unit, although the landlord was clearly aware that the tenant was planning to vacate the rental unit when she did. Under these circumstances, section 36(2)(c) of the *Act* alone may not prevent the landlord from claiming for damage to the rental unit.

I am not satisfied that the landlord has provided sufficient evidence to meet the burden of proof required under section 67 of the *Act* to demonstrate that the tenant was responsible for damage to the rental unit during this tenancy. He has not submitted condition inspection reports, nor has he provided any written estimates, receipts, or invoices to support his claim. I dismiss the landlord's application for a monetary award for damage to the rental unit. I allow the tenant's application for an order requiring the landlord to return the \$1,125.00 pet damage and \$1,125.00 security deposits.

Tenant's Application for a Return of Double the Pet Damage and Security Deposits

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 in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord 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)). At the hearing, the tenant requested that the landlord be required to return double her security deposit.

With respect to the return of the pet damage and security deposits, the triggering event is the provision by the tenant of the forwarding address in writing. The first written provision of the tenant's forwarding address for the purposes of returning these deposits was by way of the tenant's counsel's letter of July 14, 2010. Based on this undisputed evidence, the landlord had 15 days to either return these deposits or to apply for dispute

resolution. The landlord filed for dispute resolution for permission to retain these deposits on July 20, 2010, well within the 15 day period established in section 38(1). As such, I dismiss the tenant's application for a monetary award of double the amount of the pet damage and security deposits pursuant to section 38(6) of the *Act*.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to retain the tenant's pet damage and security deposits to partially satisfy the monetary award issued to the landlord.

Item	Amount
Landlord's Loss of Rent May 2010	\$2,250.00
Landlord's Loss of Rent June 2010 – January 2011 (8 months @ \$150.00 per month = \$1,200.00)	1,200.00
Less Pet Damage Deposit	-1,125.00
Less Security Deposit	-1,125.00
Total Monetary Order	\$1,200.00

As both parties have been partially successful in their applications, I make no order regarding their respective filing fees.

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