

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent the landlord a copy of his application for dispute resolution by registered mail shortly after he submitted that application to the Residential Tenancy Branch on July 21, 2010. The landlord confirmed having received this information. I am satisfied that the tenant served the landlord with his application for dispute resolution in accordance with the *Act*.

In her written submission, the landlord referred to a CD she was attaching in her evidence package. As I had no such CD, I asked the landlord if she were certain that it was attached to her evidence package. She said that she was uncertain whether the CD was submitted. I proceeded with this hearing without the landlord's CD evidence, which the landlord stated was comprised of photographs of damage to the rental unit.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for loss arising out of this tenancy agreement? Is the tenant entitled to obtain a return of the security deposit from the landlord? Is the tenant entitled to a monetary award for the landlord's failure to return the security deposit within 15 days of the end of this tenancy or the tenant's provision of

his forwarding address in writing to the landlord? Is the tenant entitled to recover his filing fee for this application?

Background and Evidence

This month-to-month tenancy commenced on May 15, 2008. Monthly rent at the time the tenant vacated the rental unit on May 31, 2010 was set at \$700.00. The landlord continues to hold the tenant's \$350.00 security deposit paid on May 15, 2008.

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

The tenant's request for a monetary award included requests for the following:

Item	Amount
Return of Double Tenant's Security Deposit (2 x \$350.00 = \$750.00)	\$700.00
Compensation for Landlord's Seizure of Tenant's Refrigerator	300.00
Damages for Duress	500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$1,550.00

The parties agreed that the landlord left a \$275.00 cheque for the return of the tenant's security deposit for the tenant on June 12, 2010. The landlord testified that the \$75.00 deduction was to account for damage to the walls, carpet and cleaning. The tenant did not accept this cheque. The landlord did not apply for dispute resolution to seek authorization to retain a portion of the security deposit. The tenant entered into written evidence a copy of his June 22, 2010 letter requesting that the landlord forward his \$350.00 damage deposit and fridge to his address.

The landlord testified that the rental premises were not left in clean condition and that the tenant left a stain on the carpet and markings on the walls. The landlord confirmed that no joint move-in or move-out condition inspections or inspection reports were conducted for this tenancy. The landlord issued no requests to conduct a move-out

inspection. The landlord said that there was an oral agreement between her mother, one of the co-landlords, and the tenants whereby the landlord paid for repairs to a fridge that the tenants brought to the property during the course of this tenancy on the understanding that the fridge would be left with the rental premises when the tenants ended their tenancy.

Analysis

The principal aspects of the tenant's claim and my findings around each are set out below.

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 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)). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address in writing.

I accept that the landlord attempted to resolve the issue of the return of the tenant's security deposit when the landlord left a \$275.00 cheque for the tenant on June 12, 2010. However, the tenant refused to accept that cheque and sent a written request for the return of the entire security deposit on June 22, 2010 along with his forwarding address. After receiving the tenant's June 22, 2010 letter, the landlord had written confirmation that the tenant wanted the entire security deposit returned to him. The landlord did not return the entire security deposit nor did she apply for dispute resolution to the Residential Tenancy Branch within 15 days.

In accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award of double his security deposit as the landlord failed to comply with section 38 of the *Act*.

Refrigerator

Both parties claim ownership of the refrigerator in the rental premises. They agree that the landlord who did not attend the hearing refused to allow the tenants to remove the refrigerator when the tenants vacated the rental premises. The tenant requested possession of the refrigerator or a monetary award of \$300.00 for his loss.

The parties agree that the existing refrigerator provided by the landlords as part of the tenancy agreement malfunctioned in 2008. The landlord testified that repairs to the existing refrigerator were unsuccessful and the landlord was waiting for the arrival of a part to repair that fridge. The parties agreed that the landlord gave the tenants permission to access another of the landlord's refrigerators elsewhere on the property. However, the tenant and his wife testified that this arrangement was unsuitable as they needed access to the refrigerator at different hours of the day and night as their children were very young at that time. They also testified that some of the food in the malfunctioning refrigerator became spoiled and had to be discarded.

The tenants said that a friend gave them a high quality Maytag refrigerator purchased in 2003 for \$1,800.00. Although the tenant did not submit into written evidence a receipt for the friend's purchase of the refrigerator, he testified that his friend had given him the receipt showing the original purchase price of the refrigerator. At the commencement of the hearing, the friend telephoned into the hearing as a potential witness. As the landlord accepted that the tenant's friend would testify that the refrigerator was purchased in 2003 for \$1,800.00, the parties agreed that there was no need to call this witness since the landlord was not disputing this evidence.

The landlord testified that the tenants gave no notice to her or her mother that they were intending to bring their own refrigerator to the rental premises. She said that the tenants were not without a refrigerator for long and that the landlord had intended to repair the refrigerator when the tenants brought the new refrigerator to the rental unit. Both parties agreed that the new Maytag refrigerator required repairs shortly after it was brought to the rental unit. The landlord who attended the hearing said that her mother

told her that there was an oral agreement between the tenants and the landlord that the refrigerator would remain in the rental premises if the landlord paid for these repairs. The tenants denied that any such oral agreement existed. The landlord said that the landlords paid \$200.00 for these repairs.

I allow the tenant's claim for a monetary award of \$300.00 for their loss of the refrigerator they brought to the rental premises. Although it does not appear that they obtained permission to bring this refrigerator to the rental unit, I am satisfied by the evidence that the landlord's agreement to pay for repairs to the Maytag refrigerator was an indication of the landlord's permission to allow them to do so. The landlord did not dispute the tenant's \$300.00 estimate of the present worth of this 7-year old refrigerator purchased by the tenant's friend for \$1,800.00. The written and oral evidence of the tenant is more credible than the oral testimony of one of the landlord's who could only recount what her mother told her of the alleged oral agreement between the parties when the refrigerator was repaired. However, the tenants did acknowledge that the landlord paid for the repairs to the refrigerator. This would not normally occur unless the landlord believed that an arrangement were in place whereby the appliance in question had become part of her responsibility as a landlord. I find that a monetary award of \$300.00 is fair compensation for this used refrigerator repaired at the landlord's expense two years ago.

I dismiss the tenant's application for a monetary award for damages which he described as an allowance for the time he expended in trying to resolve this matter and for the distress caused to him and his wife. No such award is available under the Act.

Since the tenant's application has been partially successful, I allow him to recover his filing fee for this application from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour which requires the landlord to return double the tenant's security deposit plus interest, \$300.00 in compensation for the

landlord's retention of the refrigerator, and \$50.00 for the tenant's filing fee. This monetary Order of \$1,053.31 is issued in the following terms:

Item	Amount
Return of Double Security Deposit (2 x \$350.00 = \$700.00 + \$3.31 interest -based on original \$350.00 amount only = \$703.31)	\$703.31
Compensation for Landlord's Seizure of Tenant's Fridge	300.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,053.31

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