

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant 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 landlord testified that he sent the tenants his dispute resolution hearing package by registered mail on September 16, 2010. He provided a Canada Post tracking number to confirm this mailing. The male tenant who attended the hearing (the tenant) said that he received this mailing. I am satisfied that the landlord served his dispute resolution hearing package to the tenants in accordance with the *Act*.

At the commencement of the hearing, the landlord revised his application to reflect the correct municipality for the rental unit. I also agreed to revise this application to note that it was submitted pursuant to the *Residential Tenancy Act* and not the *Manufactured Home Park Tenancy Act* as was indicated in the landlord's original application.

During the hearing, the tenant requested the return of the tenant's security deposit plus interest.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit that occurred during this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in satisfaction of the monetary award issued? Is the landlord entitled to recover his filing fee for this application from the tenants?

### Background and Evidence

This month- to-month tenancy commenced on June 1, 1997. At the time that the tenants vacated the rental unit on September 3, 2010, the tenants were paying \$675.00 in monthly rent. The landlord testified that he continues to hold the tenants' \$312.50 security deposit plus interest, paid on or about June 1, 1997.

The landlord applied for a monetary award of \$312.50 for damage caused by the tenants during this lengthy tenancy. He applied to retain the tenants' security deposit to compensate for the damage to the unit and the cleaning required when the tenants vacated this rental suite.

The landlord provided no evidence of either a joint move-in or move-out condition inspection. The landlord testified that no request was made to the tenants to attend a move-out inspection of the rental unit. The landlord did not conduct or complete a condition inspection report after the tenants left the rental unit. The landlord submitted photographs taken on September 4, 2010. The building manager who provided evidence on the landlord's behalf gave sworn testimony that she attended the premises when these photographs were taken. She testified that she visited the rental unit in 1997 before the tenants moved into the rental unit and immediately after they left the rental unit. She testified that the tenants left the rental unit in very bad condition and that the photographs submitted accurately reflected the extensive damage and cleaning required to restore the rental unit to a condition whereby it could be rented again. The landlord testified that the rental unit was re-rented for October 1, 2010 after it was thoroughly cleaned and renovations were undertaken.

The tenant admitted that the tenants left the rental unit in a dirty condition when they vacated the rental unit, but said that they tried to clean up as best they could. He said that the carpets were damaged and were never replaced during this tenancy. He said that the tenants had to repair damage in the bathroom and replaced the bathroom flooring themselves. He said that the other tenant was a smoker and this also contributed to the condition of the rental unit by the time they vacated it, as did the tenants' dogs who lived in the rental unit. He said that there were rodent problems in the building which the landlord never properly addressed.

The tenant could not comment on the landlord's photographic evidence of the condition of the rental unit at the end of this tenancy because he did not receive this evidence from the landlord. The landlord confirmed that he did not provide a copy of these photographs submitted as evidence to the Residential Tenancy Branch. As such, I provide little weight to the landlord's photographic evidence.

### 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord provided no receipts, invoices, estimates or repair bills to verify the amount of the damage to this rental unit. Although he provided photographs of the condition of the rental premises at the end of this tenancy, he did not send copies of these photographs to the tenants. The landlord did not dispute the tenant's assertion that the tenants moved into the rental unit in 1997 on an "as is" basis. The landlord provided no move-in or move-out condition inspection reports, nor did the landlord ask for such inspections.

In considering the landlord's application, I give weight to the oral evidence provided by the landlord's building manager who attended the rental unit both before and after this tenancy. I also attach weight to the tenant's admission that the rental unit was left in dirty condition when they vacated the rental unit. However, the absence of any receipts to document the landlord's losses, the lack of any condition inspection reports and the landlord's failure to serve the tenants with his photographic evidence significantly limits his entitlement to a monetary award for damage. In addition, there is undisputed evidence from the tenant that the landlord undertook no renovations or upgrading of items such as carpeting during this tenancy. Although the landlord is entitled to obtain a clean rental suite at the end of a tenancy, it would appear that many of the repairs undertaken would have needed to be conducted at the end of a 13-year tenancy whether or not the premises were cleaned before the tenants vacated the rental unit.

I am satisfied by the evidence submitted by both parties that significant cleaning was required at the end of this tenancy. For that reason, I allow the landlord to retain \$80.00 from the tenants' security deposit to reflect the cleaning required by the landlord at the end of this tenancy.

The present value of the tenants' \$312.50 security deposit plus interest from June 1, 1997 is \$353.37. The \$80.00 monetary award for damages is deducted from this amount. I direct the landlord to return the remaining \$273.37 from the tenants' security deposit. I issue a monetary Order in the tenants' favour to reflect this decision.

Since the landlord has been largely unsuccessful in his application, I make no order for the recovery of his filing fee.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$273.37. I direct the landlord to return \$273.37 from the tenants' security deposit to the tenants forthwith. This Order allows the landlord to retain \$80.00 from the tenants' security deposit plus interest for damage arising out of this tenancy.

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*.