

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

This hearing dealt with applications from both the tenant and the landlords pursuant to the *Residential Tenancy Act* (the). The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. The landlords applied for a monetary order for unpaid rent and for damage to the unit pursuant to section 67. Both parties applied to obtain or retain all or a portion of the security deposit pursuant to section 38. Both parties applied to recover their filing fees for their applications from the other party.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties agreed that they received the other party's dispute resolution hearing package by registered mail well in advance of the hearing. I am satisfied that the parties served one another with these hearing packages and their written evidence in accordance with the *Act*.

Issues(s) to be Decided

Are either of the parties entitled to monetary awards? Which of the parties are entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

Although neither of the parties provided a copy of the Residential Tenancy Agreement, the parties agreed that the landlords entered into a one-year fixed term tenancy agreement with four tenants on November 1, 2009. The tenancy was scheduled to end on October 31, 2010. Monthly rent was set at \$2,500.00, payable on the first of each month. The landlords continue to hold a \$1,250.00 security deposit for this tenancy paid on or about October 15, 2009.

The male landlord confirmed that the tenant(s) gave oral notice in July 2010 that they were intending to vacate the rental premises by the end of August 2010. Shortly thereafter, the landlords commenced efforts to either sell or rent this property. The tenant/applicant remained in the rental unit until he and other tenants who were by then living in these rental premises vacated the rental unit by September 1, 2010.

The parties agreed that the tenant(s) gave the keys to the landlord on September 3, 2010. The tenant testified that the landlords permitted the tenants to remain in the rental unit until that date to complete their cleaning of the rental unit at the end of this

tenancy. The tenant entered written evidence that the tenants “tried in vain to clean the carpets with my mother’s carpet cleaner which was not in good working order.” He entered written evidence that the tenants “decided to forfeit a portion of the damage deposit to allow (the landlords to) have the carpets cleaned.” He entered undisputed written evidence, confirmed by the landlords, that there was an oral agreement between the tenant and the female landlord that the landlords would retain \$525.00 from the tenant’s security deposit. The tenant testified that he agreed to this deduction from the security deposit on the understanding that he would be provided copies of receipts and invoices that would confirm the actual amount spent by the landlords on the rental unit.

The parties agreed that the tenant attended at the landlords’ residence on September 21, 2010, as requested by the landlords, to pick up the \$525.00 security deposit cheque that they had agreed to orally. The tenant entered undisputed written evidence that no one was present at the landlords’ residence, but an envelope with the tenant’s name was left in the landlords’ mailbox. Since the landlords did not provide the requested receipts and invoices with the \$525.00 cheque, the tenant called the landlords to enquire about the receipts. When the female landlord refused to provide these receipts and told him to “go ahead and sue”, the tenant destroyed the cheque.

The parties agreed that the tenant sent written notice of his forwarding address to the landlord on September 27, 2010 for the purposes of returning the tenant’s security deposit. The landlords said that throughout most of this tenancy all interaction with the tenants had been through one of the other tenants, Mr. EN. The landlords said that they were uncertain whether they should be providing the security deposit cheque to the tenant or to Mr. EN. When the landlords neither applied for dispute resolution to retain the security deposit nor returned the security deposit, the tenant applied for dispute resolution seeking a monetary award of \$2,500.00, double the \$1,250.00 security deposit paid in October 2009.

The landlords entered oral and written evidence regarding their claim for a monetary award of \$7,500.00. Their claim included a request for a monetary award of \$5,000.00, which was to compensate them for their loss of rent for September and October 2010, which resulted from the tenants’ failure to comply with the terms of their one-year fixed term tenancy agreement. The parties agreed that the tenants did not provide a written notice to end tenancy, although they both agreed that the tenants did provide oral notice of their intention to end this tenancy at the end of August 2010. The landlords also requested a monetary award of \$2,500.00 for the tenant’s failure “to return the keys, garage door opener and clean the rental unit on time for us to have it rented out causing us to lose income for a month and interest incurred on mortgage payment.” The landlords submitted photographs of the condition of the rental premises at the end of

this tenancy. The landlords confirmed that no joint move-in condition inspection was conducted at the beginning of this tenancy. They also confirmed that no joint move-out condition inspection was conducted, none was requested by the landlords, and the landlords did not provide a condition inspection report to the tenant(s).

Analysis

Tenant's Application

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 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) of the *Act*). The triggering event for the return of the security deposit is the provision by the tenant of the forwarding address in writing. In this case, there is undisputed evidence that the tenant provided a forwarding address in writing on September 27, 2010.

Section 38(4) of the *Act* allows the landlord to retain an amount from a security deposit only if the tenant agrees in writing to allow the landlord to retain an amount to pay a liability or obligation of the tenant or if a Dispute Resolution Officer makes an order allowing the landlord to do so. Although there was an oral agreement regarding a portion of the security deposit which the tenant maintains the landlord did not implement, the tenant did not provide agreement in writing that would enable the landlords to retain a portion of the security deposit.

I find that the landlords have not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

Landlords' Application

I am satisfied by the evidence that the tenants did not comply with the requirement to end their tenancy by written notice to the landlords. There is also no evidence that the landlords and tenant agreed in writing to end this tenancy in accordance with section 44(1)(c) of the *Act*. The tenancy did not end on the date specified as the end date for this tenancy as set out in this fixed term tenancy agreement, nor did the tenants leave the premises in clean condition by the date they said they would. I accept the landlord's claim that the tenant did not comply with the legislation or their tenancy agreement. Consequently, in accordance with section 7(1) of the *Act*, I find that the tenant must compensate the landlord for damage or loss that arises out of this non-compliance.

Section 7(2) of the *Act* also requires the landlord to do whatever is reasonable to minimize the tenant's exposure to damage or loss. In this case, I am satisfied by the evidence provided by the parties that the landlords did attempt to rent the premises to another tenant. The landlords testified that they commenced advertising the availability of the rental suite promptly and received an application for rent from a prospective tenant interested in moving into this rental unit on September 1, 2010. However, the rental unit was not cleaned properly by that date. The landlords provided convincing evidence that the premises were not in a condition whereby a new tenant could occupy the rental unit until late September 2010. They testified that they were successful in mitigating the tenant's losses for October 2010 by renting the premises to another tenant as of October 1, 2010 for \$2,600.00 per month.

I allow the landlords' claim for loss of rent for September 2010 in the amount of \$2,500.00. I reduce the landlords' entitlement to a monetary award for loss of rent by \$100.00, the amount of additional rent that the landlords received from the new tenants in excess of what they would have received from the original tenants had they continued their tenancy agreement until the expiration of that agreement on October 31, 2010.

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.

As the landlords did not comply with the joint move-in and move-out inspection provisions of the *Act*, I am not allowing much of their claim for damage to the rental unit. The tenant provided oral and written evidence disputing the landlords' assertions regarding the condition of the rental unit at the commencement of this tenancy. However, there is undisputed evidence from the parties that the tenant did not clean the carpets in the rental unit at the expiration of this tenancy. Under these circumstances, I allow a monetary award for cleaning of the rental unit in the amount of \$100.00.

As both parties have been successful in their applications, I make no order regarding recovery of their filing fees from the other party.

Conclusion

I allow the tenant's application for a monetary award of \$2,500.00 for a return of the security deposit for this tenancy.

I allow the landlords' application for a monetary award in the following terms for recovery of unpaid rent for September 2010 and damage to the rental unit, less the extra rent that the landlords received from the new tenants for the remainder of the original tenancy agreement.

Item	Amount
Unpaid September 2010 Rent	\$2,500.00
Less Additional Rent Received from this Rental Unit for October 2010 (\$2,600.00 - \$2,500.00 = \$100.00)	-100.00
Damage to Rental Unit (Cleaning)	100.00
Total Monetary Award in Landlord's Favour	\$2,500.00

Since the two monetary awards offset one another, I issue no monetary Order to implement my decisions regarding these two applications. The landlord is allowed to retain the tenant's security deposit to partially offset the monetary award issued in the landlord's favour.

Both parties bear the costs of their filing fees for their applications.

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*.