

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

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

- a monetary order 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 his filing fee for this application from the tenants pursuant to section 72.

The tenants applied 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 all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their 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 parties agreed that the landlord served a copy of his dispute resolution hearing package to the tenants by sending it by registered mail on March 2, 2011. The parties agreed that the tenants served a copy of their dispute resolution hearing package to the landlord by sending it by registered mail on or about March 3, 2011. Both parties confirmed receiving these documents. I am satisfied that the parties served one another with these packages in accordance with the *Act*.

The tenants testified that they did not send a copy of their written evidence to the landlord. Their evidence consisted of three letters. One of these was a February 3, 2011 letter to the landlord that they said they posted on the landlord's door on February 3, 2011 when he refused to answer the door following their delivery of the keys to him. In that letter, they provided their forwarding address in writing to the landlord. The landlord denied receiving this letter, the contents of which were read into evidence at hearing. The other two letters were from the tenants and the female tenant's mother in support of their application for dispute resolution. As these two letters basically provided written statements of oral testimony provided by the tenants, there was no need to consider an adjournment of this hearing.

The parties agreed that the landlord handed a copy of his evidence, eleven photographs of the rental unit, to the tenants shortly before the hearing. Although the landlord served this photographic evidence to both the tenants and the Residential Tenancy Branch well after the time limits for doing so, the tenants said that they had had an opportunity to review these photographs and were prepared to proceed with this hearing.

#### Issues(s) to be Decided

Are either of the parties entitled to a monetary award for damage or loss arising out of this tenancy? Which of the parties are entitled to obtain the tenants' security deposit? Are either of the parties entitled to recover their filing fees from the other party?

#### Background and Evidence

This month-to-month tenancy commenced on April 1, 2010. Monthly rent was set at \$650.00, payable on the first of each month. The landlord continues to hold the tenants' \$325.00 security deposit paid on March 31, 2010.

The parties agreed that the tenants notified the landlord that they were planning to vacate the rental unit by February 1, 2011. Although the tenants said that they moved their belongings from the rental unit before that date, they confirmed the landlord's claim that they did not give him the keys to the rental unit until February 3, 2011.

The landlord testified that a joint move-in condition inspection was conducted on April 1, 2010. He said that the results of that inspection were recorded on a "standard form" but conceded that the tenants did not sign that report nor was a copy provided to them or entered into written evidence by the landlord. Based on the landlord's description of this standard form, it is unclear whether the document he referred to was a room-by-room inspection report.

The landlord testified that he did not conduct a joint move-out condition inspection with the tenants. He observed that there was "no point in doing one" because he was "just getting childish answers" from the tenants with respect to his concerns about their tenancy. He testified that he did conduct a condition inspection of the premises himself, and prepared a report. However, once more he testified that he did not send a copy of that report to the tenants nor did he enter this into written evidence for this hearing.

The landlord applied for a monetary award of \$1,500.00, an amount which he said was far less than the actual amount of damage and loss that he suffered as a result of this tenancy. He said that the tenants damaged the rental unit, including dents to his fridge, chips to the glass shower doors in the bathroom, scratches to doors, a hole in the wall, damage to the closet door railings and a range of other items. He said that this was a

new one bedroom carriage house when the tenants moved in with new appliances (i.e., washer, dryer, stove and fridge). He said that no one had ever lived in this rental unit before the tenants. The tenants testified that the landlord told them he had used these premises to entertain guests in the past and they disagreed with his claim that the rental unit was in immaculate condition when they commenced their tenancy.

In addition to his application for damage caused during this tenancy, the landlord said that he was unable to re-rent the premises to another tenant until March 16, 2011. He said that he could not do so until he got the premises repaired and repainted. He said that the new tenant is paying the same \$650.00 in monthly rent as the tenants paid. He said that he advertised the suite for rental on Craigslist, likely a few days after the tenants vacated the rental unit. He asked for compensation for his loss of rent caused by the tenants' failure to provide him with the keys to the rental unit and give him vacant possession of the rental unit until February 3, 2011.

### 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.

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.

### Analysis – Tenants' Application to Obtain a Return of Double their 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) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the provision by the tenant of the forwarding address in writing.

In this case, the landlord has rebutted the tenants' claim that they posted their February 3, 2011 letter containing their forwarding address in writing on his door. Both parties have applied for dispute resolution to resolve the issue of who should obtain the tenants' security deposit. Since I am not satisfied that the landlord did in fact receive their forwarding address in writing before he applied for dispute resolution regarding this matter, I find that the landlord's obligations to return their security deposit was not triggered.

In accordance with section 38(1) of the *Act*, I allow the tenants' application to obtain a return of their security deposit plus interest. No interest is payable over this period. I issue a monetary award in the tenants' favour in the amount of \$325.00. For the reasons outlined above, I dismiss the tenants' application for a return of double their security deposit pursuant to section 38(6) of the *Act*.

#### Analysis – Landlord's Application for Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants' failure to yield clear and vacant possession of the rental unit to the landlord until February 3, 2011 compromised the landlord's ability to rent the premises to another tenant. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss. The landlord testified that he did not commence his attempts to re-rent these premises to another tenant until a few days after he obtained possession of the rental unit. Although he said that he advertised for a new tenant on Craigslist, he provided no copy of his advertisement, when he placed this advertisement or the duration of his advertisement. The landlord did not dispute the tenants' evidence that they gave him a notice to end this tenancy, presumably more than 30 days in advance of their intended departure by February 1, 2011. The fact that the tenants vacated the rental premises on February 3, 2011 instead of February 1, 2011 would not affect the landlord's inability to obtain a tenant as of February 1, 2011. He provided no evidence that he had another tenant ready to move into the rental unit as of February 1, 2011 or that the tenants' failure to give him the keys by February 1, 2011 caused his loss of rent for February 2011. Rather, I find that the landlord was responsible for delaying his efforts to rent the unit to another tenant until a few days after the tenants vacated the rental premises. The landlord has not demonstrated that the tenant's failure to move out by February 1, 2011 caused him a loss of rent for that month.

For these reasons, I limit the amount of the monetary award I allow the landlord to an overholding charge for the actual pro-rated time that they remained in possession of the rental unit. I allow the landlord a monetary award of 2 days of overholding until February 3, 2011. This results in a monetary award in the landlord's favour of \$46.43 (i.e.,  $2/28 \times \$650.00 = \$46.43$ ).

#### Analysis – Landlord's Application for Damage to be Applied Against the Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Section 36(1) of the *Act* reads in part as follows:

#### ***Consequences for tenant and landlord if report requirements not met***

**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*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(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...*

Similar provisions of section 24 are in place to extinguish the right of the landlord to claim against a security deposit if move-in condition inspections do not lead to the landlord's production of a condition inspection report and forwarding of a copy of that report to the tenant.

In this case, the landlord admitted that:

- he did not obtain a signature from the tenant(s) for the April 1, 2010 joint move-in condition inspection;
- he did not send the tenants a copy of the move-in condition inspection report;
- he did not request or conduct a joint move-out condition inspection; and

- he did not send the tenants a copy of a move-out condition inspection report.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

Although the landlord's failure to comply with the above-noted provisions of the *Act* limit his eligibility for a monetary claim for damage to be applied against the tenants' security deposit, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenants gave oral testimony that they did not believe that any of the damage attributed to them by the landlord occurred during their tenancy and noted that the premises were used occasionally by the landlord before they occupied the rental unit. The landlord provided oral and photographic evidence to support his claim that the tenants were responsible for damaging the rental unit during their tenancy.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged except for reasonable wear and tear" to this relatively new rental unit. I am satisfied that the tenants are responsible for at least some of the damage noted in the landlord's photographs of the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$200.00 to compensate him for damage that arose during this tenancy.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to apply the amount of his monetary award against the \$325.00 security deposit plus interest that he continues to retain. No interest is payable over this period. I order the landlord to return the remaining portion of the tenants' security deposit.

As both parties have been partially successful in their applications, I issue no orders regarding recovery of their filing fees for their applications.

## Conclusion

I issue a monetary Order in the tenants' favour in the following terms which allows the tenants to recover their security deposit less the amounts allowed the landlord for damage and loss arising out of this tenancy.

<b>Item</b>	<b>Amount</b>
Landlord's Loss of Rent February 2011	\$46.43
Damage and Loss Arising from Tenancy	200.00
Less Security Deposit	-325.00
<b>Total Monetary Order</b>	<b>(\$78.57)</b>

The tenants are 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*.