

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit 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 their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- 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 landlords 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 female landlord (the landlord) confirmed that on January 31, 2011 she received the tenants' written notice to end this tenancy by February 28, 2011. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by registered mail by the tenants on April 2, 2011. The tenants confirmed that they received a copy of the landlords' dispute resolution hearing package sent by registered mail by the landlords on March 3, 2011. I am satisfied that the parties sent these packages and their evidence packages in accordance with the *Act*.

During the early portions of this hearing, we encountered difficulties with a voice mail message from one of the parties' offices playing in the background of the hearing. We were eventually able to eliminate this distraction by disconnecting and reconnecting with the telephone conference hearing. The hearing was then able to proceed without this distraction.

### Issues(s) to be Decided

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

### Background and Evidence

This month-to-month tenancy commenced on August 1, 2010. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$425.00 security deposit and \$75.00 pet damage deposit, both paid on or about July 24, 2010. This tenancy ended when the tenants vacated the rental unit on February 21, 2011.

The landlords testified that no joint move in condition inspection was conducted and no move-out condition inspection report was produced or provided to the tenants.

The tenants applied for a monetary award of \$1,000.00, for the return of double their security and pet damage deposits. They asked for double these deposits because the landlords had not returned these deposits to them.

The landlords initially applied for a monetary award of \$199.00, but reduced the amount of this claim to \$179.00 at the hearing. This amount was to compensate them for cleaning the rental unit, damage caused by the tenants and for the hauling of items to the dump.

### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. 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, affidavits, miscellaneous letters and e-mails, 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 – Security Deposit and Damage to the Rental Unit

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.

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.

In this case, as noted by the tenants, the landlords did not conduct or attempt to conduct a joint move-in condition inspection at the beginning of this tenancy. As such, section 24(2) of the *Act* establishes that the landlord is not entitled to claim against a security or pet damage deposit for damage to the rental unit. Although the landlords did convene a joint move-out condition inspection, they did not prepare a report of that inspection nor did they provide a copy to the tenants. Section 36(2)(c) of the *Act* establishes that the landlord is not entitled to claim against either of these deposits for damage if a report is neither prepared nor provided to the tenants. Both parties agreed at the hearing that the female landlord told the tenants at the move-out inspection that the condition of the rental unit was "fine."

Since 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. However, 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 male tenant agreed that they left some garbage on the property that the landlords would have to dispose of after they ended their tenancy. The male tenant also admitted that their dog did cause some damage by chewing on the trim in the rental unit. He said that they tried to repair this damage. The female landlord provided oral, written and photographic evidence to support the landlords' claim that the tenants caused gouges and scratches on walls, that the tenants' dog damaged trim and moulding, and that cupboards were not cleaned when the tenants vacated the premises. She admitted that some of the items were not repaired before the new tenants moved into these premises on February 24, 2011 for the same monthly rental amount.

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." I find that some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. The landlords submitted a \$20.00 receipt for dumping material remaining after this tenancy. I allow a monetary award for this dumping fee plus the landlords' claim for one hour of time to remove this material from the rental unit at a rate of \$20.00 per hour. In addition, the landlords provided written evidence that cleaning

was required after the tenants left and that they had to deduct \$50.00 from the new tenants' rent to compensate for this lack of cleaning. I allow the landlords to deduct a total of \$90.00 from the tenants' security deposit to compensate for the tenants' failure to comply with the requirement of section 37(2)(a) of the *Act*.

I dismiss the remainder of the landlords' claim for damage. I do so because they failed to comply with the move-in and move-out provisions of the *Act*, failed to produce any further receipts for work they undertook and have admitted that some of the work they have claimed for has not been performed (i.e., replacement of trim moulding).

I issue a monetary award in the tenants' favour in the amount of \$410.00, requiring the landlords to return the tenants' security deposit plus interest less the \$90.00 I allow the landlords to retain for the reasons outlined above. No interest is payable over this period.

#### Analysis – Tenants' Application for Return of Double the 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*). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit. With respect to the return of the security deposit, the triggering event is the latter of the provision by the tenant of the forwarding address or the end of the tenancy.

In this case, the tenants entered written evidence, signed by both tenants and both landlords, confirming that the tenants handed their forwarding address in writing to the landlords on February 21, 2011. The landlords applied for dispute resolution on March 3, 2011, requesting authorization to retain the tenants' security deposit. Since the landlords applied for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, the tenants are not entitled to a monetary award for double their security deposit pursuant to section 38(6) of the *Act*.

#### Filing Fees

Both parties have been partially successful in their applications. Under these circumstances, I make no orders regarding recovery of the filing fees for their applications.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$410.00 in the following terms:

<b>Item</b>	<b>Amount</b>
Return of Tenants' Security Deposit	\$425.00
Return of Tenants' Pet Damage Deposit	75.00
Less Dumping Fee	-20.00
Less 1 Hour of Landlords' Time for Removing Garbage from Premises	-20.00
Less Cleaning Allowance	-50.00
<b>Total Monetary Order</b>	<b>\$410.00</b>

The tenants are provided with these Orders in the above terms and the landlords must be served with a copy of these Orders as soon as possible. Should the landlords 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*.

