

DECISION

Dispute Codes MNDC, MNSD, RP, MND

Introduction

This hearing dealt with applications from the landlord and the male tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord 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 his filing fee for this application from the tenants pursuant to section 72.

The male tenant 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 the security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord and the male tenant attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Although the female tenant was notified of the hearing of the landlord's application, she did not attend by the 9:56 a.m. end of this conference hearing.

The landlord testified that he received the male tenant's January 28, 2011 email advising him that the tenants would be ending their vacancy by February 26, 2011. The landlord testified that he sent a copy of his dispute resolution hearing package to both tenants at their separate addresses by registered mail on March 16, 2011. He provided Canada Post Tracking Numbers to confirm this mailing. The male tenant confirmed that he received the landlord's dispute resolution hearing package and his evidence by registered mail. The landlord gave written evidence that the female tenant was in contact with him after he sent the dispute resolution hearing package to her and was aware of the landlord's application for dispute resolution. I am satisfied that the landlord served the dispute resolution package to the tenants in accordance with the *Act*.

The male tenant testified that he served his dispute resolution hearing package to the landlord by email. The landlord denied receiving a copy of the male tenant's dispute resolution hearing package and was not aware that the male tenant had filed his own

application for dispute resolution. Section 89 of the *Act* sets out a number of ways whereby a landlord or tenant can serve an application for dispute resolution to a respondent. Sending an application for dispute resolution by email is not one of the allowed ways to serve this type of document. As such, I find that the tenant did not serve the landlord with his application in accordance with the *Act* and for that reason have not considered the merits of the male tenant's application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover his filing fee for this application.

Background and Evidence

This month-to-month tenancy commenced on September 1, 2010. Monthly rent was set at \$1,050.00. The landlord continues to hold the tenant's August 26, 2010 security deposit in the amount of \$525.00 plus interest. No interest is payable over this period.

The parties agreed that the tenants vacated the rental unit early in February 2011, although the tenants paid rent for the entire month of February 2011.

The landlord applied for a monetary award of \$575.00, the amount of the tenants' security deposit. He claimed for damage to a cabinet door, damage caused by excessive smoking damage to this smoke-free rental unit, the cost of locks and for cleaning supplies so that the landlord could clean the suite and prepare it for new tenants.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute on the following terms:

1. The parties agreed that the landlord will retain \$325.00 from the tenants' security deposit for damage arising out of this tenancy.

2. The parties agreed that the landlord will return the remaining \$200.00 portion of the security deposit plus interest, none of which is payable over this period, to the male tenant who has requested the return of that security deposit.
3. The male tenant agreed that he did not serve his application for dispute resolution in accordance with the *Act* and agreed to withdraw his application and that he will not pursue this matter further.

The parties agreed that this constitutes the final settlement of all matters in dispute between the parties regarding this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the male tenant's favour in the amount of \$200.00. I deliver this Order to the male tenant in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement. As per the parties' agreement, I allow the landlord to retain \$325.00 from the tenants' security deposit.

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*.