

DECISION

Dispute Codes MNSD, MNDC MND, FF

Introduction

Both parties have filed applications for dispute resolution. The Landlord has filed an application for a monetary order to keep the security deposit, for damages to the unit and recovery of the filing fee. The Tenant has made application for the return of double the security deposit, money owed or compensation for costs incurred and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

The Tenant has confirmed receiving the Landlord's evidence package. The Landlord did not receive the Tenant's evidence package, but it was determined that the evidence submitted were documents that the Landlord was already in possession of. The exception is the disputed letter dated February 21, 2011 with the Tenant's forwarding address in writing. I find that no bias is apparent and allow the Tenant's evidence to be considered.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties agreed that this tenancy began sometime around August 2, 2010 and ended about December 31, 2011. There is no signed tenancy agreement. Both parties agreed that the Landlord retains a \$325.00 security deposit. No Condition Inspection Reports for the Move-In or the Move-Out were completed.

The Tenant is seeking the return of the \$325.00 security deposit and an additional \$325.00 for a breach of the Residential Tenancy Act. The Tenant has also filed a claim of \$80.00 for an amount paid to a Smoke Detector Inspection cost incurred.

The Tenant states that he provided his forwarding address in writing to the Landlord on February 21, 2011 as shown in a submitted letter of evidence requesting the return of the \$250.00 of the security deposit with a deduction of \$75.00. The Landlord disputes that she never received this letter. The Tenant also states that another letter dated March 18, 2011 was sent to the Landlord as a "second and final reminder" requesting the return of \$250.00 of the security deposit and confirming the forwarding address of the Tenant. The Landlord confirms receiving this letter. The Landlord confirmed that she did not obtain permission from the Tenant to retain all or part of the security deposit. The Landlord also confirmed that she did not file an application for dispute resolution until March 30, 2011.

The Tenant has not provided any details or evidence about the \$80.00 amount being claimed for a smoke detector inspection penalty.

The Landlord is seeking to claim costs for damages incurred from the Tenancy. The Landlord requests \$41.94 for Pro-rated rent stating that the Tenant moved out on January 1, 2011. The Landlord is also seeking \$25.00 for costs to change locks, carpet shampooing costs of \$145.60 (shown in a invoice from Busy Boys Services), kitchen cabinet cost of \$50.00, kitchen sink pipe plumbing costs of \$89.60 (invoice from Cedar Hill Plumbing, Heating and Gas Fitting), replacement of a refrigerator crisper drawer for \$114.91 (invoice from Reliable Parts), Painting costs of paint and supplies for \$80.00, cleaning cost of \$300.00, kitchen ceiling repair of \$896.00 (estimate letter from Nirwan Drywall), costs for an exterior door for \$15.00, the cost of printing photographs for \$43.70, registered mail costs of \$10.47. The Tenant disputes these claims.

Analysis

As both parties have attended the hearing by conference call and have referred to the other's evidence package, I am satisfied that each have been properly served with the relevant notice of hearing and evidence packages.

The Tenant's application for return of double the \$325.00 security deposit has not been established. The Tenant and Landlord are in dispute over the Tenant's evidence of a letter dated February 21, 2011. The responsibility is for the Tenant to prove that the Landlord received this letter. The Tenant has provided no such evidence to support his

claim. Based upon the evidence provided, I find that the Landlord was provided with the Tenant's forwarding address in writing on March 18, 2011. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Landlord filed for dispute resolution on March 30, 2011 (12 days) which is within the allowed 15 day period after receiving the Tenant's forwarding address in writing. As such, the Tenant's application for return of double the security deposit is dismissed.

The Tenant's claim for \$80.00 for a smoke detector inspection penalty has not been established. The Tenant has failed to provide any details for this claim other than a notation on RTB-37, the Monetary Order Worksheet. This portion of the Tenant's claim is dismissed.

The Landlord's claims of \$43.70 for photographs and \$10.47 for registered mail costs are not recoverable as part of litigation costs in preparing for this hearing. As such, this portion of the Landlord's claim is dismissed.

The Landlord's claims for Pro-rated rent of \$41.94, cost to change locks of \$25.00, a carpet stain for \$50.00, kitchen cabinet costs of \$50.00, an exterior door cost of \$15.00 are in dispute with the Tenant. The Landlord has not provided any receipts or invoices to show that a cost was incurred for these costs. The Landlord relies on photographic evidence submitted into evidence. As stated both the Landlord and the Tenant have stated that no condition inspection report for the move-in or the move-out were completed. The Tenant disputes the Pro-rated rent stating that he moved out on December 31, 2010. The Landlord has not provided any evidence to support the Pro-

rated rent amount for 1 day. The Landlord relies on photographs submitted, but the photographs clearly show no damage to any of the items listed. The photographs display a high degree of dirt requiring cleaning. As such, I find that the Tenant has not established a claim for these costs. This portion of the application is dismissed.

The Landlord has made a claim for \$80.00 for painting costs. The Landlord claims \$40.00 for the cost of paint, \$10.00 for paint rollers and 3 hours of labour to paint at \$10.00 per hour. The Landlord has not provided any receipts or invoices for the associated costs of the painting. The Landlord relies on the photographic evidence submitted depicting various scuffs and stains. I decline to award costs for the paint and paint rollers as no evidence has been submitted that the Landlord incurred these costs. I do award the Landlord's labour costs of \$30.00.

The Landlord has made claims for carpet shampoo cost of \$145.60 and cleaning costs of \$300.00. The Landlord relies on the photographic evidence and a carpet cleaning invoice from Busy Boys Services. There is no condition inspection report to determine the pre-tenancy condition of the rental unit. The Landlord states that the unit was brand new and that the Tenant was the first occupant. The Tenant disputes this. The Landlord has not shown an entitlement to carpet steam or shampoo cleaning at the end of the tenancy. However, the Landlord through the photographic evidence submitted has established that the Tenant left the rental unit in a below average sanitary condition. The photographs depicting paint damage in the rental unit would require above average cleaning requirements. As such, I award a nominal amount of \$145.60 equal to the costs of carpet shampooing for this portion of the Landlord's claim. The Landlord relies on the photographic evidence for general cleaning of the rental unit. The Landlord's claim of \$300.00 for cleaning is in dispute. The Landlord has not provided any supporting evidence for this cost. The Landlord claims 10 hours of cleaning at \$30.00, the lower end of a professional cleaner. I prefer the evidence of the Landlord in this case over that of the Tenant. The Landlord has established a claim for cleaning based upon the photographic evidence, but has not incurred this cost, but has instead cleaned the unit themselves. I find the \$30.00 per hour rate to be excessive in the circumstances and dismiss that claim. I award a nominal amount of \$200.00 for 10 hours of cleaning at \$20.00 per hour.

The Landlord has made a claim for \$896.00 for kitchen ceiling damage. The Landlord has not incurred this cost, but has provided a letter of estimate for the damage. The Landlord relies solely on the photographic evidence, but has not provided any details of the damage. The photographs display what appears to be 2 round sphere-like stains. Without any other details from the Landlord's claim or the Contractor's estimate for

work, I find that the Landlord has failed to establish a claim and dismiss this portion of the claim.

The Landlord has made a claim for \$89.60 for plumbing costs to repair damaged pipes from the kitchen sink. The Landlord relies on an invoice from Cedar Hill. The invoice notes repairs for the drains and faucet for the basement kitchen sink. I find that the Landlord has failed to establish a claim for this item. The claim is in dispute by the Tenant and the Landlord has not provided any supporting evidence that the Tenant was responsible or negligent for this item. As such, this portion of the Landlord's claim is dismissed.

The Landlord has made claim for \$114.91 for the replacement of a refrigerator crisper pan. Although the Landlord has provided an invoice for the cost incurred for the replacement of this item, the Landlord has failed to provide any supporting evidence that the Tenant was responsible or negligent for the damage on this item. The Landlord's claim for this item is dismissed.

Based upon the above, I find that the Landlord has established a total monetary claim for damages to the rental unit of \$425.60. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord may retain the \$325.00 security deposit in partial satisfaction of the claim and I grant an order under section 67 for the balance due of \$100.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application for return of double the security deposit is dismissed.
The Tenant's application for a monetary order for compensation or loss is dismissed.
The Landlord is granted a monetary order for \$100.60.
The Landlord may retain the 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*.

Dated: July 15, 2011.

Residential Tenancy Branch