

## **DECISION**

Dispute Codes      MND, MNSD, FF, MNDC

### Introduction

There are applications filed by both parties. The Landlord has filed an application for a monetary order for damage to the unit, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has filed an application for a monetary order for compensation for loss under the Act, regulation or tenancy agreement, the return of double the security deposit and recovery of the filing fee.

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

At the beginning of the hearing, both parties have stated that their applications have been amended. The Landlord has reduced her total monetary claim from \$3,000.00 to \$812.00 based upon the Landlord's internal invoice for replacement costs to the living room floor (\$450.00), kitchen counter top (\$250.00) and a refrigerator shelf (\$25.00). The Tenants have increased their monetary claim to \$4,872.75, consisting of the \$360.00 security deposit, \$12.75 accrued interest from July 15, 2005, \$3,000.00 for compensation for loss of quiet enjoyment and risk to their health and \$1,500.00 for aggravated damages from the Landlord's disregard of the Tenant's health and well-being. Both parties have confirmed receipt of the other party's amended applications.

The Landlord has submitted an evidence package consisting of a 3 page letter from Royal Providence Management Inc. for Move-out responsibilities dated April 30, 2011 and 13 pages of photographs. The Landlord states that the letter was given to the Tenant at the end of March 2011. The Tenant states that the letter and photographic evidence was not received. The Landlord has provided no proof of service for these documents. I find that the hearing can continue as the letter and photographs provide no details of value that could assist or be of bias to either party. The facsimile photographs provide no viewable details.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

### Background and Evidence

This Tenancy began on July 15, 2005 on a 6 month fixed term then later on a month to month basis as shown in the Tenant's submitted copy of the signed Tenancy Agreement. A security deposit of \$360.00 was paid on July 15, 2005.

The Landlord has confirmed receipt of the Tenant's August 11, 2011 submitted evidence package. The Tenant has also confirmed receipt of the Landlord's August 16, 2011 submitted evidence package.

The Landlord is seeking \$812.00 in a monetary order based upon the Landlord's invoice and the completed condition inspection report for the move-in and the move-out. The move-out portion of the report notes only 3 things. A cracked shelf in the refrigerator, a kitchen counter top rotted out and carpets not cleaned with a notation of "check with cath". The Tenant disputes this claim stating that the Landlord was notified verbally numerous times from October of 2010 about a water leak from the kitchen pipes, which was not responded to. The Tenant relies on letters dated after the application was filed from friends, family members and a neighbour. The Tenant also states that the cracked shelf in the refrigerator is the result of normal wear and tear that the Tenant's have lived in the unit for 6 years.

The Tenant is seeking \$3,000.00 in compensation for loss of quiet enjoyment and health issues over approximately a 9 month period dealing with mold issues. The Tenant states that the \$3,000.00 claim was an arbitrary amount in response to the Landlord's claim of \$3,000.00. The Tenant stated that there was no loss of usage of the rental unit, but an inconvenience of repeatedly dealing with the Landlord over this issue. The Landlord states that the Tenant has failed to provide any certified medical or official reports of evidence of mold in the rental unit or of a medical diagnosis causing the ill health.

The Tenant is also seeking \$1,500.00 in aggravated damages for the respondent's conduct in dealing with this tenancy. The Landlord disputes this stating that there is no written notice from the Tenant asking for any issues to be dealt with by the Landlord.

### Analysis

As both parties have attended the hearing by conference call and have confirmed receipt of both party's relevant evidence, I am satisfied that both have been properly served.

Based upon the evidence provided by both parties, I find that the Landlord has failed to establish her claim. The Landlord's condition inspection report makes no mention of damage to the living room floor. The Landlord has also failed to provide any direct evidence to contradict the Tenant's repeated verbal notices to deal with water leaking from the kitchen pipes. I find that the Landlord has failed to provide any detail on the cracked shelf in the refrigerator, which the Tenant states is not noticeable and is the result of normal wear and tear over her 6 year tenancy. The Landlord was not able to provide any evidence on the age of the refrigerator. The Landlord's application is dismissed.

Section 32 of the Act addresses Landlord and Tenant obligations to repair and maintain, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a states of decoration and repair that

- (a) Complies with the health, safety and housing standards required by law, and
- (b) Having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based upon the documentary evidence and testimony of both parties, I find that there is insufficient evidence that the Landlord has failed to provide and maintain the unit in accordance with the above statutory provisions. I make this finding in reference to the Tenant's claims that through the Landlord's negligence in failing to maintain and repair the rental unit that a risk arose over the Tenant's health. There is no evidence submitted that the unit fails to meet health, safety and/or housing standards required by law, pursuant to any assessment or notification provided by an authorized local or provincial government official.

Having reviewed the evidence, I find there is insufficient evidence to support the Tenant's claim for compensation related to the allegation of the Landlord's negligence in failing to maintain and repair the rental unit. Accordingly, the Tenant's application for compensation related to these aspects of the dispute is dismissed.

The Tenant is entitled to the return of the \$360.00 security deposit and the accrued interest to date of \$12.75 from July 15, 2005 currently held in trust by the Landlord. I find that the Tenant is also entitled to recovery of the \$50.00 filing fee. I grant the Tenant an order under section 67 for the balance due of \$422.75. 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 is granted a monetary order for \$422.75.

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: August 24, 2011.

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Residential Tenancy Branch