

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 tenant's 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 tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:14 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail to the forwarding address provided by the tenant on July 12, 2011. He provided a Canada Post Tracking Number to confirm this mailing. He testified that his package has not been returned to him. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

After the hearing concluded, the tenant attended the Burnaby Office of the Residential Tenancy Branch expecting to participate in a face-to-face hearing of the landlord's application. By that time, the hearing had been completed and the tenant did not participate in any way in the telephone conference hearing earlier that morning.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord entered written evidence of his tenancy agreement with the owner of the property whereby he leased the entire rental property. He testified that he and his family lived in a three bedroom rental unit upstairs in this property. He testified that he rented out four bedrooms downstairs to students who share a kitchen, dining room and bathroom with one another. He testified that this tenant moved into his bedroom in the downstairs rental unit on November 15, 2010 for a fixed term tenancy that was to

conclude on April 30, 2011. The tenant's monthly rent was set at \$600.00 payable on the first of each month. The landlord continues to hold a \$300.00 security deposit paid by the tenant on November 5, 2010.

The landlord applied for a monetary award of \$350.00. This amount was to compensate him for his costs in cleaning up the premises after the tenant vacated the rental unit and for recovery of his \$50.00 filing fee for this application. The landlord also applied to keep the tenant's security deposit in partial satisfaction of the monetary award requested.

### 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. 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.

The landlord testified that he did not conduct a joint move-in condition inspection of the rental unit. The landlord said that he did not send any written requests to the tenant to schedule a joint move-out condition inspection when this tenancy ended. Although he said that he did arrange for a joint move-out condition inspection, he did not conduct one when the tenant did not attend at the appointed time for this inspection. He testified that the tenant left the key for him on a table. The landlord did not provide a written move-out condition inspection report nor did he send a copy of that report to the tenant.

The landlord said that he applied for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, the same address where he sent a copy of his application for dispute resolution.

In support of his application for a monetary award, the landlord did not submit any written tenancy agreement, nor a list of the other tenants who may have been living in other bedrooms in the lower level of the rental property the landlord rented from the owner of the property. The landlord did not provide any photographs, receipts or

invoices. When questioned about the lack of receipts, the landlord said that the people who cleaned the rental unit did not give him a receipt although he requested one.

Although the tenant may have abandoned the rental unit, the landlord has not provided any proof other than his oral testimony that there was damage requiring cleaning or repair to the rental unit arising out of this tenancy. The landlord has also failed to provide any receipts or invoices for the cleaning that he maintained was necessary to restore the rental unit to its previous condition. Without a joint move-in condition inspection report, a move-out condition inspection report or any other photographic or written record of the condition of the premises, I find that the landlord has not met the burden of proof required to entitle him to a monetary award for damage or loss arising out of this tenancy. Consequently, I dismiss the landlord's application for a monetary award without leave to reapply.

Since I also dismiss the landlord's application to retain any portion of the tenant's security deposit, I order the landlord to return the tenant's \$300.00 security deposit with applicable interest to the tenant forthwith. No interest is payable over this period.

As the Residential Tenancy Branch waived the landlord's filing fee, I find that the landlord is not entitled to recover that fee from the tenant.

### Conclusion

I dismiss the landlord's application for a monetary award without leave to reapply.

I issue monetary Orders in the tenant's favour in the amount of \$300.00, the amount of his security deposit. The tenant is 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.

I dismiss the landlord's application to recover his filing fee from the tenant.

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*.