

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlord has applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for the return of double his security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?
- Is the tenant entitled to double the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on January 01, 2011 and ended on August 31, 2011. Rent for this unit was \$450.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$225.00 on December 22, 2010. The tenant gave the landlord his forwarding address in writing on September 05, 2011. Both parties also agree that no move in or move out condition inspection of the rental unit was conducted at the start or the end of the tenancy.

The landlord testifies that after the tenant moved out she found some damage to the unit. The tenant had put large screw holes in a door and the folding door to the shower room was missing. The landlord testifies that she spoke to a handyman who said that because of the size of the folding door the landlord would not be able to purchase one off the shelf but the handyman could replace the door for \$150.00 including finishing the door. The landlord seeks to deduct this amount from the tenant's security deposit.

The landlord testifies that at the start of the tenancy she gave the tenant a garage door opener to make it easier for the tenant to get into his unit. The landlord testifies that the tenant left the garage door open and the landlord's golf clubs were stolen. The landlord has provided a letter from her insurance company from a previous claim when her golf clubs and other items were stolen in 2005. The landlord testifies that she paid \$2,302.80 to replace the golf clubs in 2005 and seeks to recover this amount less a sum for depreciation. The landlord has provided the receipt for replacing the golf clubs at that time. The landlord also seeks to recover her \$50.00 filing fee from the tenant.

The tenant testifies that he did remove the folding door and accepts responsibility for this. The tenant states however that he has inquired about the cost of replacement of this door and has estimated it would cost \$70.00 to replace. The tenant agrees at the hearing that the landlord may keep \$70.00 from his security deposit to cover this cost.

The tenant testifies that he was not responsible for leaving the garage door open. The tenant states the landlord would often leave it open making his unit vulnerable. The tenant states as his unit could be accessed via the garage he always made sure the garage door was closed.

The landlord cross exams the tenant and asks the tenant why did the landlord take away the tenants garage opener. The tenant replies that the landlord took the garage opener away after the golf clubs were stolen and gave the tenant keys to get into his unit another way.

The tenant testifies that the landlord did not do either of the condition inspections with him at the beginning and end of the tenancy. The tenant also states he gave the landlord his forwarding address in writing on September 05, 2011 and the landlord did not file her application to keep the security deposit within 15 days of that date. The tenant states he therefore seeks to recover double his security deposit less the \$70.00 the landlord can keep for the folding door. The tenant also seeks to recover his \$50.00 filing fee from the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for the missing folding door; the landlord has provided no evidence to support her claim that it will cost \$150.00 to replace this folding door. The tenant does not dispute that he removed the door and argues it would only cost \$70.00 to replace. Without any corroborating evidence from the landlord to support her claim that the door would cost \$150.00 I find the landlord has not met the burden of proof in this matter.

With regards to the landlords claim to recover the cost of replacement golf clubs; The landlord must again meet the burden of proof that the golf clubs were stolen because of the actions or neglect of the tenant in leaving the garage door open. The tenant has denied leaving the door open and the landlord has provided no corroborating evidence to support

her claim that the tenant was at fault in this matter. Consequently, the landlords claim for the cost of replacing her golf clubs is dismissed without leave to reapply.

With regard to the landlords claim to keep the tenants security deposit; Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

As the landlord agrees she failed to conduct an inspection or complete either of these reports at the start or end of the tenancy then according to s. 24(2)(a) and s. 36(2)(a) of the Act the landlord has extinguished her right to file a claim to keep the security deposit and this section of the landlords claim to keep the security deposit is dismissed.

As the landlord has been unsuccessful with her claim I find the landlord must bear the cost of filing her own application.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. As I have determined that the landlord has extinguished her right to keep the security deposit the landlord should have returned the security deposit to the tenant within 15 days of receiving the tenants forwarding address in writing. Therefore as the landlord has failed to return the deposit than pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Consequently, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$450.00** pursuant to section 38(6)(b) of the *Act*. The tenant

has agreed at the hearing that the landlord may deduct \$70.00 from the security deposit for the folding doors and this sum will be deducted from the tenant's monetary award.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$450.00
Less the agreed upon sum for the door	(-\$70.00)
Filing fee	\$50.00
Total amount due to the tenants	\$430.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$430.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords application is dismissed without leave to reapply.

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: December 16, 2011.

Residential Tenancy Branch