

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for unpaid utilities or money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for the return of the security deposit.

Both parties have attended the hearing by conference call and gave testimony. As both parties have attended and have acknowledged receiving the evidence submitted by the other party, I am satisfied that each has been properly served with the notice of hearing and evidence packages as deemed under the Act.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs are dismissed

During the hearing it was clarified by both parties that the monetary amounts for each are to be amended to the following. The Tenant seeks a monetary order for \$400.00 and the Landlord seeks \$203.26 and recovery of the \$50.00 filing fee.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain all or part of the security deposit?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on February 1, 2012 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st of each month and a security deposit of \$450.00 was paid on February 1, 2012. Both parties agree that the Landlord returned \$250.00 of the \$450.00 security deposit to the Tenant by two cheques issued on April 5 and 16 of 2012. The Landlord applied for dispute resolution on April 25, 2012. The disputed amount is

\$200.00 currently held by the Landlord. Both parties agree that the Tenancy ended on April 1, 2012 and that the Landlord received the forwarding address by electronic text on April 2, 2012 at the Landlord's request.

The Tenant seeks the return of \$200.00 disputed amount from the security deposit and the award of \$200.00 to equal the amount as compensation under the Act.

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the

landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find that the Landlord has failed to comply with section 38 of the Act by failing to return or file an application for dispute within the allowed 15 days from the end of tenancy on April 1, 2012. On this basis, the Tenant has established a right for the return of the disputed amount of \$200.00 and an amount equal to the \$200.00 because the Landlord has failed to comply with the Act. The Tenant has established a monetary claim of \$400.00.

The Landlord seeks recovery of \$203.26. This consists of an outstanding electric bill for \$60.00. The Tenant disputes this but has conceded that \$50.00 is owed for the electrical bill. The Landlord states that the Tenant is responsible for 1/3 of the cost of the bill, but has failed to provide sufficient evidence to support this claim. I find based upon the direct testimony of the Tenant that the Landlord has established a monetary claim of \$50.00 for this portion of the application.

The Landlord also seeks compensation for \$63.26 for the cost of new locks purchased because the Tenant failed to return the proper keys. The Tenant disputes this and states that the proper keys were returned to the Landlord. The Landlord relies on a statement from the new tenant who immediately took possession of the rental unit on the same date of the tenant's move-out. The letter states that the keys given to her did not work on the locks. The Landlord has submitted the receipt from Home Depot for this expense. The Landlord also seeks the recovery of \$80.00 for labour. \$60.00 covers the Landlord's expense of hiring someone to install the new lock. The Landlord

has not submitted any receipts for this amount. The Landlord also seeks \$20.00 for general cleaning that was required to clean the rental unit. The Tenant disputes this stating that the unit was left clean. The Landlord has provided photographs of the rental unit from the end of the tenancy to support her claim. I find on a balance of probabilities and upon the direct testimony of both parties and the documentary evidence submitted by the Landlord that the Landlord has established a claim for the replacement of new locks for \$63.26 and the \$60.00 in labour. The Landlord has also satisfied me based upon the photographs submitted that the general cleaning costs of \$20.00 has been established.

The Landlord has established a total claim for \$193.26. The Landlord is entitled to the recovery of the \$50.00 filing fee. The Tenant has established a total claim of \$400.00. I grant a monetary order under section 67 for the Tenant of \$156.74. 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 \$156.74.

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: May 23, 2012.

Residential Tenancy Branch