

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with an application by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has made an application seeking the return of the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations, or the tenancy agreement?

### Background and Evidence

The tenancy began on or about September 28, 2012 and ended on December 2, 2011. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00.

The landlord gave the following testimony; the tenant's moved into the unit without their permission, a move in condition inspection was conducted by the landlord without the tenant present; the form was sent to the tenant to be reviewed and signed, the form was never signed, the landlord and tenant attempted to conduct a move out inspection report however the two parties were unable to come to an agreement and required the assistance of the local police to "settle things down", the tenant's left the place damaged and dirty, seeking to retain the security deposit as well as other costs of cleaning and repair, received the tenant's forwarding address in late May 2012 and filed for dispute resolution shortly after.

The tenant gave the following testimony; never was offered an opportunity to be present at the move in condition inspection, adamantly disputes the condition of the unit as purported by the landlord, landlord was being unreasonable at the move out inspection and used foul language, seeking to recover her security deposit.

### Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned several times in regards to their behaviour and demeanour during the hearing.

Section 35 (1) of the Act states that: "*The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*",

In Addition Section 35 (4) of the Act states that; "*Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations* ", this was not done in the matter before me.

The landlord submitted some photos to show the state of the unit at move out, however with no valid signed move in inspection report I am unable to ascertain the condition of the unit at the begin of the tenancy. Section 36 of the Act clearly outlines that the landlord extinguishes their right to make claim against the security deposit if a move out and move in condition inspection was not conducted. Based on the above the landlord is not entitled to retain the security deposit for the costs of cleaning and repairs.

I dismiss the landlord's application in its entirety without leave to reapply.

The tenant applied to the return of the security deposit and some other items that she submits were damaged as a result of living in the unit.

I do find that the tenant is entitled to the return of the \$600.00 security deposit.

I am not satisfied that the tenant is entitled to any compensation for the other items as claimed due to the insufficient evidence before me.

As neither party was completely successful in their application I decline to award the filing fee.

I grant the tenant an order under section 67 for \$600.00. 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 of \$600.00.

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: June 20, 2012.

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Residential Tenancy Branch