

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on March 1, 2011 and ended on May 31, 2012. Rent of \$780.00 was payable monthly and the rent was due to increase to \$813.00 for June 1, 2012. At the onset of the tenancy the Landlord collected \$390.00 as a security deposit. The Parties conducted a move-out inspection although the Tenant did not agree to the move-out inspection report. The Landlord does not know whether a move-in inspection was conducted. The Tenant states that no move-in inspection was conducted.

The Landlord states that the Tenant’s notice to end the tenancy was not received until May 3, 2012. The Landlord states that the unit was advertised continuously starting in the middle of April 2012 and that the unit was filled for August 1, 2012. The Landlord claims lost rental income of \$813.00 for June 2012. The Tenant states that the notice to end tenancy was provided to the Landlord on May 1, 2012 by placing the notice in the Landlord office mailbox. The Tenant states that the unit was vacated and the keys were

returned on May 16, 2012 and argues that this provided extra time to the Landlord to fill the unit. The Tenant's Witness states that during the month of June 2012 tradespersons were working on the unit and it was therefore not available for the month of June. Further, this Witness states that on June 4, 2012 the Witness called the Landlord to enquire about the availability of the Tenant's ground floor unit and was told that one was not available. The Landlord acknowledges that work was being done on the unit for the entire month of June 2012 and acknowledges that the unit was not ready for occupancy until the end of June 2012.

The Landlord states that the Tenant failed to pay rental arrears and claims \$460.00. The Tenant states that \$400.00 was paid for May 2012 rent and states that it was agreed that the security deposit would offset the remaining rental arrears of \$380.00. The Landlord did not dispute this part of the Tenant's evidence.

The Landlord states that the Tenant failed to clean the stove at the end of the tenancy and claims \$30.00 as the cost. The Landlord states that the Tenant failed to clean the carpets at move-out and claims \$80.00 as the cost. Receipts were provided for both claims. The Tenant states that neither of these items was clean at move-in and despite repeated requests for the cleaning this was never done during the tenancy.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the undisputed evidence that the unit was being worked on during the month of June 2012 and that the unit was not ready for rental until July 2012, I find that the

Landlord has failed to substantiate that the Tenant's actions caused the Landlord to lose rental income and I dismiss this part of the claim. Based on the Tenant's evidence that the unit was not clean at move-in and considering the lack of a move-in condition report, I find that the Landlord has failed to substantiate that the Tenant caused the oven and carpet to be dirty and I therefore dismiss this part of the claim. Accepting that the Tenant paid \$400.00 towards May 2012 rent, I find that the Landlord has substantiated a monetary entitlement of **\$380.00** in rental arrears. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee. Setting the security deposit of **\$390.00** plus zero interest off the entitlement leaves **\$10.00** owing to the Tenant. I order the Landlord to return \$10.00 to the Tenant forthwith.

#### Conclusion

**I order** that the Landlord retain **\$380.00** from the security **deposit** and interest of \$390.00 in full satisfaction of the claim and I order the Landlord to return the amount of **\$10.00** to the Tenant forthwith.

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: July 30, 2012.

---

Residential Tenancy Branch