

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, MNDC, FF, SS, O

### Introduction

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

The Tenant applied on May 15, 2012 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 4, 2012 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain all or part of the security deposit – Section 38;
4. An Order for service of documents in a different way than required by the Act – Section 71; and
5. An Order to recover the filing fee for this application - Section 72.

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

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to serve documents in a different way?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy began on September 1, 2010 and ended on April 1, 2012. Rent in the amount of \$1,500.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$750.00. No move-in inspection was conducted. Although the Parties conducted a move-out inspection, no form was filled out and no copy provided to the Tenant. The

Tenant provided its forwarding address and on April 13, 2012, the Landlord mailed a cheque for \$113.40 of the security deposit to the Tenant.

The Tenant states that at the time of the move-out inspection, the Landlord told the Tenant that everything was in order with the unit. The Tenant claims return of double the security deposit.

The Landlord states that after the inspection and prior to the new tenants moving into the unit, the new tenants told the Landlord that the unit was not cleaned sufficiently. The Landlord states that the Tenant left the unit unclean with damages and claims as follows:

- \$35.00 for a missing glass light dome, no receipt provided;
- \$308.00 for patching and repairing burn holes in the carpet in front of the fireplace, invoice provided;
- \$224.00 for the cost of a used replacement fridge to replace the fridge with broken shelves, invoice provided;
- \$75.00 for the Landlord's personal labour to repair a fence damaged by the Tenant's dog;
- \$201.60 for cleaning the unit, including windows, front entry wall, bathroom, stove and under appliances, removal of garbage from back yard.

The Landlord states that the Tenant damaged the carpet as the carpet was new prior to the previous tenancy and the previous tenant provided an email stating that the fireplace was not used. The Landlord states that the Tenants acknowledged the damage done to the fence and provided an email from the Tenant in relation to this damage.

The Tenant denies damage to the carpet and challenges the evidence of the previous tenant who would have an interest in the outcome. The Tenant disputes that the fridge was damaged by the Tenant and that the Tenant cleaned the unit to the Landlord's satisfaction. The Tenant reiterates that during the walk through the Landlord told the

Tenant that the unit was in good condition. The Tenant argues that if further repairs or cleaning were needed to the unit, the Landlord should have informed the Tenant and provided the Tenant with an opportunity or option to rectify the problems.

### Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24 of the Act further provides that where a Landlord does not provide an opportunity for such inspection, the right of a landlord to claim against the security deposit is extinguished. Based on undisputed evidence that no move-in inspection was offered by the Landlord, I find that the Landlord's right to claim against the security deposit is extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$1,500.00**. Subtracting the amount of **\$113.40** from this amount leaves an entitlement to the Tenant of **\$1,386.60**. As the Tenant has been successful with its application, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,436.60**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. 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. Based on the undisputed evidence of the Parties, I find that a walk

through inspection was conducted by the Parties at move-out and that no problems were noted with the unit at that time. As a result I find that the Landlord has failed to substantiate that the unit was left unreasonably clean by the Tenant. Further, given the lack of a move-in inspection report as evidence of the unit at move in, I find that the Landlord has failed to substantiate that the Tenant left damages to the unit and I dismiss the claims in relation to the fridge, carpet and light fixture. Given the email corroborating the damage to the fence, I find that the Landlord has substantiated a monetary entitlement of **\$75.00** for the repairs. As no evidence was provided by the Landlord in relation to its claim for different service, I dismiss this part of the claim. As the Landlord's entitlement is significantly less than its claim, I decline to award recovery of the filing fee.

Setting the Landlord's entitlement of **\$75.00** off the Tenant's entitlement of **\$1,436.60** leaves **\$1,361.60** owing by the Landlord to the Tenant.

#### Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,361.60**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 19, 2012.

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Residential Tenancy Branch