

## **DECISION**

### **Dispute Codes**

For the tenants:      MNSD FF  
For the landlord:      MNSD MNDC FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”).

The tenants applied for a monetary order for the return of double their security deposit and to recover the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants, an agent for the landlord (the “agent”) and a property manager for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties agreed at the outset of the hearing that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

- What should happen to the security deposit under the *Act*?
- Is either party entitled to a monetary order under the *Act*?

### **Background and Evidence**

A fixed term tenancy began on February 1, 2012 and was to end on January 31, 2013. Monthly rent in the amount of \$1000.00 was due on the first day of each month, with a

rental incentive which will be discussed later in this decision. A security deposit of \$500.00 was paid by the tenants at the start of the tenancy. The tenants stated that they vacated the rental unit on October 1, 2012. The parties agreed that a both a move-in and a move-out condition inspection report were completed.

### Tenants' claim

The tenants have claimed for \$500.00, however clarify in their details of dispute that they are in fact seeking \$1,000.00 comprised of double their \$500.00 security deposit. The tenants are also seeking the recovery of their \$50.00 filing fee.

The tenants confirmed that they received a cheque from the landlord in the amount of \$150.00, however have not cashed the cheque to date. The cheque is not stale dated as it is not six months old yet. The parties agreed that no forwarding address was provided in writing in accordance with section 38 of the *Act*. The tenants testified that their forwarding address was provided verbally to the landlord.

The landlord filed their application on October 12, 2012 which was within fifteen days of the end of tenancy date which was October 1, 2012, the day the tenants vacated the rental unit. The tenants had originally signed a fixed term tenancy agreement which was to expire on January 31, 2013.

### Landlord's claim

The landlords are seeking \$300.00 for the discounted rent for the months of February 2012, March 2012, April 2012, May 2012, June 2012 and July 2012. The landlords are also seeking the recovery of the \$50.00 filing fee.

The tenancy agreement submitted in evidence, which was signed by all parties, states:

“3. The rent is \$1,000.00 per month and shall be payable in advance on or before the 1<sup>st</sup> day of each month, commencing on the 1<sup>st</sup> day of February 2012 and continuing on the 1<sup>st</sup> day of each month throughout the tenancy. In the event that the tenant continues to occupy the premises beyond the 31<sup>st</sup> day of January 2013, then the tenancy shall be considered month-to-month, at a rate of \$1,000.00 per month and the notice provisions under the Residential Tenancy Act shall apply.

**Rental incentive:** During the first year of occupancy, the tenant shall be entitled to a discount of \$50.00 monthly for a 6 month period commencing February 1<sup>st</sup>.

The tenant must remain in the premises for the full term of the lease for this discount to apply.”

[reproduced as written]

The male tenant confirmed that his work situation changed which prompted the need to end the fixed term tenancy early. The landlord is claiming for \$50.00 for each of the first six months for a total of \$300.00 as the tenants violated section 3 of the tenancy agreement by not remaining in the rental unit for the full year lease. The agent testified that the landlord returned \$150.00 of the tenants' \$500.00 security deposit as they felt they were owed \$300.00 for unpaid rent and the other \$50.00 represented the anticipated recovery of the \$50.00 filing fee.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Tenants' claim for double security deposit and double pet damage deposit** – The tenants confirmed by their own testimony that they did not provide their forwarding address in writing as required by section 38 of the *Act*.

As a result, I **dismiss** the tenant's application in full due to insufficient evidence, without leave to reapply, as they have not proven that the landlord violated the *Act*.

As the tenants were not successful with their application, I **do not** grant the tenants the recovery of their filing fee.

**Landlord's claim for unpaid rent** – Section 3 of the tenancy agreement states that the tenants are entitled to a rental incentive of \$50.00 discounted rent per month for the first six months if the tenants remain in the premises for the full term of the lease. The tenants did not remain in the premises for the full term of the lease. **I find** that based on the balance of probabilities and taking into account the security deposit which is half of \$1,000.00 rent, and the signed tenancy agreement which states that rent is \$1,000.00 per month, the tenants were aware that to be entitled to the rental incentive, they had to remain in the rental unit until January 31, 2013, which they failed to do.

As a result of the tenants own actions by vacating the rental unit on October 1, 2012, I find the tenants breached section 3 of the tenancy agreement which extinguished their entitlement to the discounted rent of \$50.00 per month for the first six months of the tenancy. Therefore, **I find** the landlord has met the burden of proof and is entitled to the unpaid rent of \$50.00 the first six months of the tenancy in the total amount of **\$300.00**.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

The landlord has established a total monetary claim in the amount of **\$350.00** comprised of \$300.00 in unpaid rent and the \$50.00 filing fee. **I authorize** the landlord to retain the amount of \$350.00 in full satisfaction of their monetary claim.

The tenants are at liberty to cash the \$150.00 cheque issued to them by the landlord for the balance of their security deposit. That cheque was issued in October 2012 and is not stale dated as a result.

### Conclusion

The tenants' application is dismissed in full due to insufficient evidence, without leave to reapply.

The landlord was successful with their application and established a total monetary claim of \$350.00. The landlord is authorized to retain \$350.00 of the tenants' security deposit in full satisfaction of their claim. The tenants are at liberty to cash the cheque from the landlord in the amount of \$150.00 which is not stale dated.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 18, 2013