

## **DECISION**

**Dispute Codes**      MNR, MNDC, MNSD, FF

### **Introduction**

This hearing was convened to deal with an application by the landlord for an order to recover unpaid rent, a monetary order to recover damages for cleaning and repairs to the rental unit, an order permitting the landlord to retain the security deposit, and to recover the filing fee for the cost of this application. Two agents for the landlord appeared and gave evidence at this hearing. Despite proof that the tenant was served with notice of this hearing, she did not attend personally or by agent or representative.

### **Issues(s) to be Decided**

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to an order to retain the security deposit?

The burden of proof is on the landlord to establish that the tenant is responsible for damages for a breach of a term of the *Act*, regulation or tenancy agreement.

### **Background and Evidence**

The landlords provided oral evidence that the tenant was served with the Application for Dispute Resolution on October 14, 2009 by registered mail, and provided a copy of the receipt from Canada Post.

The tenancy began on August 1, 2007, with a monthly rental amount of \$1,550.00 due on the 1<sup>st</sup> of each month. A Tenancy Agreement was entered into by the parties as a fixed term tenancy on July 25, 2007, which ended on July 31, 2008. The Tenancy Agreement contained a provision for a \$25.00 fee for NSF rent payments.

An addendum was signed by the parties on June 30, 2008, which states that the residential lease would end on July 31, 2008, not for a further year as stated by the landlords at this hearing.

The tenant paid a security deposit of \$750.00 on July 11, 2007.

On or about December 8, 2008, the landlord testified that the tenant advised that she would be moving, and that the rent cheque that she provided to the landlord for the December, 2008 rent would be returned as NSF and that she was not able to pay the outstanding amount. Once the cheque had been returned by the bank marked NSF, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the door of the residence on December 12, 2008, with an expected date of vacancy of December 22, 2008.

The landlord(s) testified that tenant moved out on her own without paying the rent for that month. The date of the actual move-out is unknown to the landlord, but the painters attended on December 17, 2008 to paint the unit, and the tenant had moved prior to that date. The landlord testified that the tenant advised she would be returning to make that rent payment, but as of the date of the Application for Dispute Resolution, October 8, 2009, the tenant had not paid the outstanding rent.

A Security Deposit Statement was signed by the parties on December 31, 2008, which indicates that the tenant authorized the landlord to deduct charges from the security deposit and return any balance to her.

The landlord provided a summary of its claim which included:

- \$1,550.00 for unpaid rent;
- \$25.00 for the December NSF Fee; and
- \$79.00 for December '08 parking.

The document also states that the tenant is not eligible for \$100 parking refund because she did not return the parking clicker or decal or keys. The landlords testified that the parking fees are not included in the Tenancy Agreement, but are on an additional Parking Agreement which is not before me.

The summary of the landlord's claim also includes:

- \$75.00 for suite cleaning;
- \$25.00 for painting repairs; and
- \$84.00 for carpet cleaning.

The landlord provided receipts for those amounts, but did not provide a move-in inspection report or a move-out inspection report with their evidence. Oral testimony was provided that the suite required cleaning after the tenant moved out and an invoice from the cleaners was provided which itemized the 3 hours charged at the rate of \$25.00 per hour. The receipt for carpet cleaning includes several units, but the landlord testified that the portion that applies to this unit totals \$84.00. The landlord further testified that the invoice provided for painting includes another unit, but is only claiming \$25.00 for 1 hour of paint repairs for picture hanging holes in the walls.

## **Analysis**

I find that the tenant was served with the Application for Dispute Resolution, which is deemed to be served 5 days after it was mailed, being October 19, 2009.

The Parking Agreement is not within the scope of the *Residential Tenancy Act*, regulations or a tenancy agreement and, therefore, the \$79.00 fee for parking for December, 2008, and the return of the \$100.00 Parking Refund are not dealt with in this decision.

I find that the tenant did not pay the \$1,550.00 for rent for the month of December, 2008, nor did she pay the \$25.00 NSF fee, as provided for in the Tenancy Agreement.

In the absence of a move-in inspection report and a move-out inspection report, it is impossible for me to determine that the tenant is responsible for the damages claimed for cleaning and repairs. Section 24 (2) of the *Residential Tenancy Act* states as follows:

- 24 (2)** The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
  - (b) having complied with section 23 (3), does not participate on either occasion, or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

A condition inspection report is also required under Section 35 of the *Act* at the end of a tenancy.

Section 38 of the *Residential Tenancy Act* states that:

**38 (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.

**38 (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*].

The onus is on the landlord to prove that the inspection reports were completed, or that 2 opportunities were provided to the tenant to complete the inspection. I cannot find that the damages claimed were due to an obligation of the tenant, other than for the outstanding rent. I therefore find that the landlord's right to claim against the security deposit for damages is extinguished.

### **Conclusion**

The application by the landlord for damages for cleaning and repairs is hereby dismissed without leave to re-apply.

The application by the landlord for a monetary award of \$1,550.00 for unpaid rent and \$25.00 for the NSF fee is allowed, and I order that the landlord retain the security deposit as a set-off from the amount outstanding. I further order that the landlord is entitled to claim from the tenant the difference in the amount of \$809.03.

The landlord has been partially successful in the application before me, and I hereby order that the landlord is entitled to recover the filing fee from the tenant for the cost of this application in the amount of \$50.00.

I hereby find that the landlord is entitled to an award against the tenant in the total amount of \$859.03.

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: February 03, 2010.

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Dispute Resolution Officer