

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the tenant a copy of the dispute resolution hearing package by registered mail on September 17, 2010. He provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served the application for dispute resolution to the tenant in accordance with the *Act*.

At the hearing, the landlord asked for authorization to revise the tenant's middle name in his application. I authorized this revision and have made the necessary changes.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

This month-to-month tenancy commenced on September 8, 2008. Monthly rent when the tenant ended this tenancy was set at \$413.00, payable on the first of the month. The landlord continues to hold the tenant's \$200.00 security deposit paid on September 8, 2008, and a \$100.00 deposit he described as a key deposit. On August 21, 2010, the tenant provided the landlord with written notice to end this tenancy on August 31, 2010.

The landlord submitted copies of a joint move-in condition inspection report and an August 31, 2010 joint move-out condition inspection report. He also submitted photographs he took of the condition of the rental unit on the day the tenant vacated the rental unit.

The landlord applied for a monetary award of \$1,180.71 to compensate for the damaged condition that the rental unit was in when the tenant vacated the rental

premises. This amount also included a request for \$262.00 in loss of rent arising out of the tenant's failure to provide adequate notice that she was ending her tenancy. He testified that a new tenant was secured for this rental unit for September 1, 2010, but the new tenant refused to occupy the premises as they needed cleaning and repairs. The landlord said that he was able to re-rent this unit for September 12 or 13, 2010 to another tenant for a monthly rental of \$525.00.

The landlord's representative was very familiar with the circumstances of this tenancy and the condition of the premises both before and after this tenancy. He conducted the joint move-in condition inspection and attended the rental unit the same day that the tenant vacated and took the photographs of the condition of the rental unit on August 31, 2010. Some of the photographs showed the condition of the rental unit after the cleaning and repairs were completed and before the rental unit was occupied by the new tenant. The tenant's representative did not question the accuracy of the landlord's photographs.

The tenant did not attend the hearing, but was represented by her representative who had never visited the rental unit nor had any direct testimony regarding the condition of the rental unit before or after this tenancy. She said that the tenant admitted that the premises were not left in clean condition when she vacated the unit and that short notice was given of the tenant's end to this tenancy. The tenant's representative submitted that the cleaning and repairs required for the rental unit should not have exceeded the amounts the landlord was holding for the security and key deposits.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the written and photographic evidence, and the oral testimony of those attending the hearing, I find the landlord's evidence more credible than that of the tenant with respect to the landlord's claim for damage or loss arising out of this tenancy. The landlord provided detailed accounts and receipts for his claim for damage. These included costs for cleaning the rental unit and carpets, replacing broken or damaged items, and repairing and painting the rental premises. I accept that the landlord is

entitled to a monetary award for the loss incurred in restoring this rental unit to a condition whereby it could be rented.

I accept the landlord's claim for all of the items submitted in the \$918.71 in non-rent related Monetary Order Details he submitted as written evidence but for the following exception. I deduct his claim for repairs and painting from \$320.00 to \$220.00 as I find that some painting would be required at the end of this tenancy. I issue a monetary award in the amount of \$818.71 for the non-rent related items the landlord claimed in his application.

The tenant's notice to end tenancy was not issued in time for the tenant to avoid liability for the landlord's loss of rental income for September 2010. However, section 7(2) of the *Act* requires the landlord to attempt to mitigate the tenant's responsibility for losses. I find that the landlord has discharged this responsibility by renting the unit to a tenant as of September 1, 2010. When this prospective tenant refused to occupy the premises, the landlord secured another tenant who took occupancy of the rental unit as of September 12 or 13, 2010.

The landlord applied for a monetary award of \$262.00 for lost rent arising from this tenancy. The late notice provided by the tenant exposed her to a maximum loss of \$413.00 for September 2010. Based on the landlord's testimony, he received a pro-rated rental payment of \$525.00 for September 2010 from the new tenant. Based on this testimony, the landlord received rent for 18 of 30 days in September 2010, a total monthly payment of \$315.00. I issue a monetary award for the \$98.00 difference between what the landlord received in rent from this rental unit (i.e., \$315.00) in September 2010 and the tenant's responsibility for \$413.00 in rent for that month.

In accordance with section 38 and the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$300.00 in security and other deposits he continues to hold plus interest.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$615.30 in the following terms which allows the landlord to retain the tenant's security and other deposits plus interest he continues to hold.

Item	Amount
Landlord's Loss of Rent for September 2010 Arising from this Tenancy	\$98.00
Non-Rent Related Items in Landlord's Claim for Damage or Loss Arising from this Tenancy	818.71
Less Security and Other Deposit Plus Interest (\$300.00 + \$1.41 = \$301.41)	-301.41
Total Monetary Order	\$615.30

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.