

## **DECISION**

Dispute Codes      MNDC, MNSD, MND, FF

### Introduction

There are applications filed by both parties. The Tenant has applied for a monetary order for the return of double the security deposit and compensation for the overpayment of utilities and recovery of the filing fee. The Landlord has applied for a monetary order for damage to the unit, money owed or compensation for breaching the tenancy agreement, to keep part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit?

Is the Landlord entitled to a monetary order for compensation for breach of the tenancy agreement?

Is the Tenant entitled to a monetary order for the return of double the security deposit?

Is the Tenant entitled to a monetary order for an overpayment for utilities?

### Background and Evidence

Both parties agree that this Tenancy began on August 15, 2010 on a fixed term tenancy ending on August 14, 2011 as shown in the submitted signed tenancy agreement. The Tenancy ended on April 30, 2011 and the Tenant has conceded that the fixed term tenancy was breached by him. The forwarding address was provided by email to the Landlord on May 7, 2011 at the Landlord's request. The monthly rent was \$1,470.00 and a security deposit of \$820.00 was paid. A cheque for \$495.86 was sent to the Tenant on May 9, 2011 by the Landlord for the undisputed amount of the security deposit. The Tenant has conceded the cost of carpet cleaning for \$112.00 and \$50.00 for the cost of cleaning the oven.

The Tenant is claiming \$510.00 for an overpayment of utilities from August 15, 2010 until April 30, 2011. There is some discrepancy as shown on the signed tenancy agreement as it shows that utilities are included in section 3 (b), but that in section (a) it

reflects (hand added notation) that utilities are an additional charge of \$170.00 per month. The addendum of terms to the tenancy state that, "Tenants are responsible for paying their own gas and hydro bills." The Tenant states that he paid the agreed upon \$170.00 each month for the utilities for the duration of the Tenancy. The Landlord states that there was no overpayment and that the Tenant agreed and paid the utilities amount each month during the Tenancy without dispute.

The Landlord has filed a claim for damage to the unit totalling, \$324.14. This consists of \$112.00 for carpet cleaning (conceded by the Tenant), \$123.00 for general cleaning of the entire unit (\$50.00 conceded by the Tenant for the oven), \$50.00 for the depreciation of the broken bottom edge of the refrigerator (the Landlord relies solely on the photograph of the damage to the bottom of the refrigerator) and \$39.14 for the cost of advertising from online advertising from, "My Ideal Home" as shown in the submitted invoice.

The Landlord has also made claim for \$2,940.00 (2 months X \$1,470.00 per month) for loss of rental income from the Tenant breaching the fixed term Tenancy Agreement. During the hearing the Landlord stated that she mitigated her costs by advertising for a replacement on April 6, 2011 as shown in the submitted advertising invoice. The Landlord stated in her direct testimony that she was able to re-rent the unit at the same rental price beginning May 1, 2011.

The Landlord has also submitted a claim of \$110.00 for a broken closet door and \$25.00 for a broken wire shelf from next to the entrance door. The Landlord relies solely on a photograph submitted of a bi-fold closet door propped against a fence. The Landlord has not submitted any invoices or receipts for the cost of replacement or repair.

### Analysis

As both parties have attended the hearing and have made detailed reference to submitted evidence of both parties, I am satisfied that each have been properly served with the notice of hearing and evidence packages filed by each party.

As there is some discrepancy with signed tenancy agreement, I find based upon the established practice of both parties for the duration of the Tenancy that no overpayment of utilities has occurred. The Tenant's application for a monetary order for compensation in this regard is dismissed.

The Tenant provided the Landlord with the forwarding address by email on May 7, 2011 at the Landlord's request. The Tenancy ended on April 30, 2011. The Landlord returned \$495.86 in a cheque on May 9, 2011. The Landlord filed for dispute resolution on June 13, 2011. Section 38 of the Residential Tenancy Act states,

**Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay**, as provided in subsection (8), **any security deposit** or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

**(d) make an application for dispute resolution claiming against the security deposit** or pet damage deposit.

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a)** may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

I find that the Landlord failed to comply with the Act. The Landlord did not file for dispute resolution over the disputed amount within the allowed 15 days from the later of the date the Tenancy ended and when the Landlord received the forwarding address in writing. I find that the Tenant has established a claim for double the disputed amount of \$324.14, totalling \$648.28.

As the Tenant has conceded the costs of \$112.00 for carpet cleaning and \$50.00 for the cost of the oven cleaning I find that the Landlord has established a claim for these amounts and is entitled to them.

The Landlord relies on an incomplete condition inspection report and photographs submitted. I find that the Landlord has failed to establish a claim for the remaining \$73.00 for cleaning and the \$50.00 for depreciation of the refrigerator. I find that the

Landlord's evidence was neither relevant nor helpful in establishing a claim. The Landlord has provided no basis for these monetary claims. This portion of the Landlord's claim is dismissed.

I find that the advertising cost of \$39.14 has been established by the Landlord. This cost was as a result of the Tenant prematurely ending the fixed term tenancy. The Landlord is granted recovery of this amount.

Residential Tenancy Policy Guideline #3 states that any damages awarded are an amount sufficient to put the Landlord in the same position as if the Tenant had not breached the agreement. I find through the Landlord's own undisputed direct testimony that no loss of rental income incurred and that this portion of the Landlord's application is dismissed. The Landlord was able to re-rent the unit at the same rental rate immediately following the end of Tenancy and suffered no loss.

Based upon the evidence provided by the Landlord, I find that she has failed to establish a claim for the \$110.00 closet door and \$25.00 wire shelf. The Landlord has provided no basis for the damage to be through the negligence of the Tenant, nor has she provided any basis for the costs claimed. As such, this portion of the Landlord's claim is dismissed.

I find that the Landlord is entitled to the following:

- \$112.00 carpet cleaning
- \$ 50.00 oven cleaning
- \$ 39.14 advertising
- \$201.14 Total Entitlement by Landlord

The Tenant is entitled to the following:

- \$648.28 double the disputed amount of the security deposit withheld

The Tenant is entitled to a monetary order for \$447.14.

Conclusion

The Tenant is granted a monetary order for \$447.14 on top of the \$495.86 already returned by cheque on May 9, 2011.

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: September 14, 2011.

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Residential Tenancy Branch