

## **DECISION**

Dispute Codes      MND, MNSD, O, MNDC, FF

### Introduction

There are applications filed by both parties. The Tenant has applied for a monetary order for the return of the security deposit, money owed for emergency bathroom repairs and recovery of the filing fee. The Landlord has made a claim for a monetary order for damage to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord's agent, S.F.T. appeared for her mother as language is an issue. The Tenant has acknowledged that S.F.T. is the Landlord's Agent and can act for her.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of the security deposit and the cost of emergency repairs?

Is the Landlord entitled to a monetary order for damage or compensation?

### Background and Evidence

Both parties agreed at the beginning of the hearing that the Tenancy ended on June 27, 2011 on a month to month basis. The monthly rent at the end of tenancy was \$4,300.00. A security deposit of \$2,100.00 was paid on November 10, 2008 as shown in the submitted copy of the signed tenancy agreement which began on December 1, 2008. No condition inspection reports for the move-in or the move-out were completed by the Landlord.

The Tenant states that the forwarding address in writing was given to the Landlord on May 16, 2011. The Landlord disputes this stating that the only record of a forwarding address was received on July 15, 2011 by email. The Tenant is unable to provide any evidence of service.

Both parties agreed that they received the others notice of hearing and evidence packages submitted and have made detailed reference to them during the hearing.

The Tenant states that he received a \$2,000.00 cheque from the Landlord for the return of the undisputed portion of the \$2,100.00 security deposit and payment of the \$473.76 emergency plumbing repairs for the toilet. The Tenant stated during the hearing that the cheque was never cashed and has subsequently been lost by the Tenant. The Landlord confirms that the cheque was sent to the Tenant, but is unable to confirm if the cheque was cashed. The Tenant's total claim being sought is the \$2,100 security deposit and the \$473.76 bathroom repairs for a total of \$2,573.76. Both parties agreed during the hearing that as the \$2,000.00 cheque was lost by the Tenant that the Tenant would not attempt to cash it and the Landlord would cancel the cheque as soon as possible. The Landlord has conceded during the hearing that the Tenant is entitled to recovery of the \$473.76 bathroom repairs. The Tenant states that at the end of tenancy he conceded up to an \$80.00 amount for the cleaning of the balcony with proof of service on an invoice.

The Landlord is seeking compensation for a material breach of the Residential Tenancy Agreement by subletting one of the parking slots to a third party. The Landlord is seeking compensation for \$1,200.00 for the parking at \$50.00 per month over 2 years. The Tenant confirms subletting the parking slots, but that it was only over a 5 month period.

The Landlord is seeking compensation of \$903.92 consisting of general cleaning of the rental unit for \$300.00 (\$30.00 X 10 Hours) performed by the Landlord, replacing two plastic shelves and one wooden shelf for \$239.94, replacing a custom fit electronic component shelf for \$125.00, new patio table for \$119.99, folding patio chair for \$59.99 and two folding camp chairs for \$59.00. The Landlord has not replaced any of the items and has not provided any invoices or receipts for these items. The Landlord has included on-line print ads of similar items. The Landlord's documentary evidence states that fixed shelves in photograph #9,10 and 11 were thrown away by the Tenant. The Tenant disputes these claims by stating that the fixed shelving was left in the rental as shown in the Landlord's evidence in photograph #10 which has been confirmed by the Landlord's Agent. The Tenant states that the various furniture items were left in the rental unit at the beginning of the tenancy which he took to be garbage for disposal as the rental was an unfurnished unit and that there were no agreements in place to care for the furniture left. The Tenant further states that a walk through with the Landlord was performed where it was determined at the time that there were no issues with the condition of the rental unit. The Landlord claims that the next day upon a closer examination that the Landlord found the rental unit dirty and the missing furniture items.

## Analysis

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

I find through the evidence submitted and the direct testimony of both parties that the Tenant is entitled to the return of the \$2,100.00 security deposit and the \$473.76 bathroom repair bill. The Tenant having being successful is also entitled to recovery of the \$50.00 filing fee. The Tenant has established a claim for the total \$2,623.76.

Section 24 of the Residential Tenancy Act states,

### **Consequences for tenant and landlord if report requirements not met**

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(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.

I find that it is clear that the Landlord has failed to comply with Section 24 of the Act by not completing a condition inspection report for the move-in or the move-out. The Landlord has extinguished her right against the security deposit. The Tenant's assertion that no furniture or items were included as part of the tenancy were noted on the tenancy agreement. The Tenant did concede to a cleaning amount of up to \$80.00 for the balcony if an invoice was furnished for this service. The Landlord has failed to provide this proof. As such, I find that the Landlord has failed to establish a claim for cleaning and compensation for items lost. This portion of the Landlord's claim is dismissed.

The Landlord's claim for compensation and a penalty for the subletting of parking for \$1,200.00 has not been established. The Landlord's claim is for 2 years. The Tenant states that it was only for a 5 month term. I find that there are no provisions in the Residential Tenancy Act for compensation or a penalty for subletting the parking. This portion of the Landlord's claim is dismissed.

I find that with no claim established by the Landlord that the Tenant is entitled to a monetary order. I grant the Tenant an order under section 67 for the balance due of \$2,623.76. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord's claim is dismissed.

The Tenant is granted a monetary order for \$2,623.76.

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: November 04, 2011.

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Residential Tenancy Branch