



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and an order to retain the security deposit in partial satisfaction of the claim. The tenant did not appear.

In regards to service, the landlord testified that the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail on July 18, 2008, but was unable to provide receipts or a tracking number to confirm service.

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

The landlord was seeking a monetary order claiming \$1,078.41. The issue to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation for loss of rent, late fees, reimbursement for NSF charges, compensation for cleaning costs, compensation for front door keys, an administration fee and reimbursement for the cost of filing this application .

### **Background and Evidence**

The landlord submitted into evidence a copy of part of the tenancy agreement, a copy of the move-in inspection report signed by the tenant, without a signature for the move-out inspection, a copy of the cleaner's time sheet showing that on July 9, 2008 the cleaner spent 7.5 hours doing "move in cleaning" on units 102 and 309, an invoice from a

locksmith for a service call (no date identified) showing charges of \$55.67 and a statement listing the landlord's claims including: \$850.00 lost rent for July 2008; \$30.00 late fee charges for July rent; \$25.00 NSF charges; \$75.00 cleaning charges; \$73.41 front door & suite key charges and \$25.00 administration fee.

The landlord testified that on May 1, 2008, the tenant signed a six-month fixed term tenancy agreement that was to expire on October 31, 2008. However, on the last day of June the tenant suddenly notified the landlord that the tenant was moving on July 1, 2008. The landlord testified that, although attempts were made to mitigate the loss, the landlord was unable to rent the unit until August 2008. The landlord testified that this resulted in a loss of rent for the month of July 2008 in the amount of \$850.00. The Landlord testified that under the tenancy agreement late payment charges would apply in the amount of \$30.00 and also that non-sufficient funds charge of \$25.00 were incurred when the tenant's rent cheque for July was returned by the bank. The Landlord stated that cleaning costs for 4 hours cleaning were incurred costing \$75.00, locksmith costs of \$73.41 for changing the locks and an "administration fee" of \$25.00.

### **Analysis**

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the Landlord, to 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 Tenant. Once that has been established, the claimant must then provide evidence that will verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred

I find that there was a violation of the Act and agreement by the tenant and I accept the landlord's evidence and testimony relating to the rental arrears of \$850.00. I also accept the landlord's verbal testimony that that attempts were made to rent the unit as quickly as possible to mitigate the loss, thereby satisfying section 7 of the Act. I find that according to the cleaner's statement the verified cleaning costs for the one unit should be for 3.5 hours at \$18.75 per hour totalling \$65.63. I find that, according to the receipt from the locksmith verifying actual charges to the landlord, the reimbursement for the keys should be set at \$55.67. The landlord did not provide verification of the \$25.00 bank charges, and this claim is therefore denied. In regards to the late payment fees, the Act limits such charges to \$25.00. In any case,, the claim for rent for the month of July 2008 was not for rent, but rather for *loss of rent*, for a period after the tenant had already vacated. As a late fee is only applicable while the tenancy is in effect, I find that it cannot be claimed under these circumstances. I also reject the landlord's claim for \$25.00 "administration fee" as there exists no authorization under the Act to impose a fee of this nature.

Based on the above facts I find that the landlord has established a total monetary claim of \$1,021.30 comprised of \$850.00 rent owed for the month of July 2008, \$65.67 for cleaning, \$55.67 for locksmith services and the \$50.00 fee paid by the Landlord for this application. I order that the landlord retain the security deposit and interest of \$427.66 in partial satisfaction of the claim leaving a balance due of \$593.64

**Conclusion**

Based on the testimony and evidence presented during these proceedings, I grant the landlord a monetary order under section 67 of the *Act* for \$593.64. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 24, 2008

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