



# Dispute Resolution Services

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

## **DECISION AND REASONS**

Dispute Codes: OPR, MNR, MND, MNDC, FF.

### Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order pursuant to Section 67;
- An order of possession to the landlord pursuant to Section 55;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

### Issues

Is the landlord entitled to a monetary order to cover outstanding rent and damages to the rental unit?

Is the landlord entitled to an order of possession?

Does the tenant owe back rent?

Did the tenant cause damage to the rental unit?

### Background and Evidence

I find that the Notice to End Tenancy dated February 28, 2008 was served on the Tenant by way of personal service with an effective date of March 31, 2008. The tenant moved out mid March 2008 and was represented by his agent at the hearing.

Both parties were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The landlord testified that the tenancy started in September 2007. The monthly rent was \$1000.00 due on the first of the month. The tenant failed to pay the entire amount of rent for January, February and March 2008. During the hearing the landlord withdrew her claim for an order of possession as the tenant moved out mid March 2008.

The landlord is making a claim for a monetary order for the following:

- \$ 100.00 Outstanding rent for January 2008.
- \$ 500.00 Outstanding rent for February 2008
- \$ 400.00 Outstanding rent for March 2008
- \$ 50.00 The fee for filing this application.
- \$ 200.00 To fix holes in walls
- \$ 200.00 For supplies and paint
- \$600.00 For garbage removal and cleaning (\$25.00 per hour for 24 hours)
- \$50.00 For the fee to file this application

### Rent

The tenant's agent agreed that the \$100.00 was due towards the unpaid rent for January. In February, the landlord was out of town and had a friend house sitting for her. The tenant's agent stated that the tenant had given the landlord's friend \$900.00 towards rent for February 2008. This money was reported missing and the landlord lodged a complaint with the local police. This matter is currently under investigation.

Since the amount that went missing was \$900.00, the tenant owes \$100.00 for rent for February 2008. The tenant's agent stated that the tenant moved out mid March and hence he felt that he did not owe rent for the entire month of March. The tenant moved out without giving notice to the landlord and is required to pay rent for March. The landlord stated that she received only \$600.00 for March.

### Damages to the rental unit

The landlord stated that the tenant left holes in the walls and damaged the laminate flooring. The landlord is claiming \$ 400.00 toward repairs and supplies to fix the

damage. The landlord did not submit into evidence any documentation, receipts or photographs. The agent for the tenant stated that the tenant denied having caused damage to the rental unit but admitted to having left full garbage bags in the suite. The landlord stated that the suite was left in an unclean condition and is requesting compensation in the amount of \$600.00 for 24 hours of cleaning work.

### Analysis

Based on the testimony of both parties, I find that the landlord is entitled to the following amounts in unpaid rent:

- \$100.00 Rent for January 2008
- \$ 100.00 Rent for February 2008
- \$ 400.00 Rent for March 2008

The landlord did not submit any evidence regarding the damage to the rental suite. It is important for the claimant to know that to 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**

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- 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. The landlord's claim for damage does not meet the components of the above test.

The agent for the tenant stated that the tenant did leave garbage behind and I find that the landlord is entitled to \$100.00 in cleaning costs.

I also find that the landlord is entitled to the \$50.00 which is the fee to file this application.

### Conclusion

I grant the landlord an order under section 67 for the amount of \$750.00 which comprises of:

- \$ 600.00 towards rent owed.
- \$100.00 towards cleaning costs
- \$50.00 towards the filing fee.

This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 30, 2008.