



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNR, MNSD, 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 for loss of income for November 2008 and for damage caused by the tenant pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72.

The notice of hearing dated November 28, 2008 was served on the tenant on December 02, 2008, by registered mail. The tenant did not provide the landlord with a forwarding address. The tenant has made arrangements with the local postal services for the tenant's mail to be forwarded from the rental unit address to the tenant's current address. The landlord mailed the notice of hearing by registered mail and has provided verification that the package was forwarded and picked up. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was 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.

Issues to be decided

- The tenant moved out without notice. Is the landlord entitled to a monetary order to recover the loss of income for the month of November and for costs incurred to restore the rental suite to a satisfactory condition?
- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?
- Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

The landlord testified that the tenancy started on August 01, 2000 for a fixed term and then continued on a month to month basis. Prior to moving in, the tenant paid a security deposit of \$100.00. The monthly rent was set at \$606.00 due in advance on the first day of each month. The landlord testified that the tenant's adult son was regularly causing disturbances in the apartment building due to problems with an addiction to alcohol. The landlord stated that on the night of October 04, 2008, the tenant's son disturbed the other occupants of the building by screaming and yelling and hitting on doors and walls. The landlord has submitted into evidence a letter of complaint from an occupant of the building and a Breach letter issued to the tenant dated October 05, 2008 describing the problem that was created by the tenant's son, by his display of anger and a lack of control which upset the other tenants and frightened the children. The tenant's son also vandalised the fire safety doors.

The tenant moved out on October 31, 2008 without giving a months notice. The tenant stated in his written submission that the landlord had indicated that the landlord would be serving the tenant with a notice to end tenancy and therefore the tenant was not required to give the landlord notice to move out. The landlord stated that the tenant left the rental unit dirty and in a state of disrepair and has submitted photographs and receipts to verify the condition of the unit and the cost to restore the unit to a condition in which it could be re rented. The landlord stated that the repairs were completed in mid November and a new tenant was found for December 01, 2008.

The landlord is claiming the following toward the costs incurred:

1.	Loss of income for November 2008	\$606.00
2.	Removal of Junk	\$70.00
3.	Cleaning costs	\$278.50
4.	Labour for repair work	\$345.00
5.	Repairs to fire doors	\$684.76
6.	Cleaning products	\$68.75
7.	Filing fee	\$50.00
	Total	\$2103.01

Analysis

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord's claim for all the above items meets all the components of the above test. Based on the undisputed sworn testimony of the landlord I find that the landlord has established a claim for damages in the amount of \$2103.01.00, which is the amount the landlord is seeking on the application and includes the filing fee.

I order that the landlord retain the security deposit and interest of \$111.72 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1991.29. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1991.29**.

Dated January 19, 2009.

Dispute Resolution Officer