



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** *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 to repair extensive damage to the rental unit and to recover loss of income for the month of October 2008;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

The tenant was served with the notice of hearing on November 17, 2008, by registered mail. Despite having been duly served, the tenant did not attend the hearing. On the basis of the solemnly affirmed evidence presented at the hearing by the landlord, a decision has been reached.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the following?

- Damages to the rental unit and in what amount;
- Loss of income for the month of October 2008;
- The fee to file this application.

### **Background and Evidence**

The tenancy started on July 01, 2008 for a fixed term of three months and ended on September 30, 2008. The rent was set at \$900.00 due in advance on the first of the month. The tenant paid a security deposit in the amount of \$450.00 on June 25, 2008 and on September 30, 2008 at the end of the tenancy, the tenant agreed in writing to allow the landlord to retain the security and key deposits.

The landlord stated that the rental suite was completely renovated in August 2007 and the tenant caused extensive damage to the rental suite which took approximately three

weeks to repair. The landlord started showing the suite on October 24, 2008 and found a tenant for November 15, 2008. The landlord stated that due to the disturbances the tenant's guests were creating, the landlord hired a security company to patrol the area and is claiming the cost that was incurred. The landlord also stated that other tenants moved out due to the problems the tenant and the tenant's guests were creating with disturbing the peace, littering, fighting, consuming liquor and other illegal activities, and as a result the landlord incurred costs to re rent these suites including advertising their availability. The landlord has submitted into evidence letters from these tenants who moved out outlining the reasons for their moves which included the disturbances caused by the tenant and the tenant's guests. The landlord has also submitted into evidence photographs and receipts to support the landlord's claim of \$3457.41 for the following:

1.	Postal fees	\$19.79
2.	Cleaning Supplies	\$314.40
3.	Nine hours of cleaning	\$135.00
4.	Carpet cleaning	\$63.00
5.	15 hours of labour	\$300.00
6.	Dump fees and garbage removal	\$121.00
7.	Keys	\$50.00
8.	Replace bedroom carpet	\$225.00
9.	Building Security	\$479.22
10.	Costs to advertise availability of three units	\$350.00
11.	Loss of income for October and half November	\$1350.00
12.	Filing fee	\$50.00
	Total	<b>\$3457.41</b>

### **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 repairs, cleaning, carpet replacement and garbage removal meets all the components of the above test. Upon completion of the restoration work, the landlord attempted to mitigate his losses by advertising and showing the suite to prospective renters. I find that since the tenancy was a fixed term tenancy ending on September 30, 2008, the landlord would have incurred advertising costs to re rent the suite at the end of the fixed term and hence is not entitled to advertising costs. The landlord incurred a delay of three weeks due to the damage caused by the tenant and hence the landlord is entitled to a loss of income for the month of October. I find that the landlord's claim for loss of income for half of November, advertising costs, security costs and postal charges do not meet all the components of the above test and hence that portion of the landlord's claim is dismissed. The tenant allowed the landlord to retain the key deposit; hence the landlord's claim for \$50.00 for key replacements is dismissed.

I find that the landlord entitled to recover the cost of filing this application.

Based on the oral and written testimony of the landlord, I find that the landlord has established a claim in the amount of \$2108.40. The tenant allowed the landlord to retain the security deposit and interest in the amount of \$453.38 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1655.02. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$1655.02**.

Dated December 24, 2008.

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Dispute Resolution Officer