



# 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 unpaid rent for November 2008, loss of income for December 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 December 03, 2008 was served on the tenant on December 05, 2008, in person. The tenant moved out on December 07, 2008 without providing the landlord with a forwarding address. 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 paying rent for November. Is the landlord entitled to a monetary order to recover the unpaid rent, loss of income for the month of December 2008 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 July 15, 2008 for a fixed term of six months. Prior to moving in, the tenant paid a security deposit of \$350.00. The monthly rent was set at \$700.00 due in advance on the fifteenth day of each month. The landlord filed an application that was heard on November 13, 2008 for an order of possession and a monetary order for the balance of rent owed in the amount of \$200.00. The landlord was ordered to retain \$250.00 from the security deposit to satisfy the landlord's claim of \$200.00 for unpaid rent and \$50.00 for the filing fee. The landlord testified that the tenant paid the outstanding rent of \$200.00 soon after the date of the hearing and the landlord has retained \$50.00 from the security deposit to cover the filing fee. The landlord has now made application to retain the balance of the security deposit in the amount of \$300.00, towards the landlord's claim for damages.

The landlord testified that attempts were made to rent the suite by advertising on grocery store message boards and in the local newspaper, but the suite remains vacant. The landlord stated that the tenant left the suite in a dirty condition and has provided a receipt in the amount of \$330.00 for cleaning costs. The landlord has also submitted into evidence a photograph of a damaged gate and a quotation to repair it.

The landlord is claiming the following toward damages:

1.	Rent for November 15 to December 14	\$700.00
2.	Loss of income for December 15 to January 14	\$700.00
3.	Cleaning costs	\$330.00
4.	Labour for repair work to damaged gate	\$100.00
5.	Materials to repair damaged gate	\$269.85
6.	Filing fee	\$50.00
7.	Filing fee at Supreme Court	\$111.00
	Total	<b>\$2310.85</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 all the above items except the filing fee for Supreme Court, 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 \$2149.85, 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 \$302.09 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 \$1847.76. 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 **\$1847.76**.

Dated January 26, 2009.

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