



# Dispute Resolution Services

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

## **DECISION**

**Dispute Codes:** MNR, MNSD, MND, 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 unpaid utilities 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 19, 2008 was served on the tenant on November 21, 08, by registered mail. The tenant did not provide the landlord with a forwarding address. The tenant has arranged with the local postal services for her mail to be forwarded from the rental unit address to her 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**

- Is the landlord entitled to a monetary order to recover the loss of income for the month of October 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 February 01, 2007 for a fixed term and then continued on a month to month basis. A move in inspection was conducted on the day the tenant moved in. The monthly rent was set at \$950.00 due in advance on the first day of each month. The tenant was required to pay the utility bills, in addition to rent. At the start of the tenancy, the tenant paid a security deposit in the amount of \$475.00 on February 01, 2007.

The landlord testified that the tenant gave the landlord a written notice to end tenancy on September 21, 2008 and moved out on September 30, 2008. On the day the tenant gave notice to end tenancy, the landlord gave the tenant a notice to inspect the rental unit. The tenant denied access to the landlord and advised the landlord to conduct an inspection after the tenant had moved out.

After the tenant had moved out, the landlord conducted an inspection and found stated that the interior of the home had been structurally modified to accommodate extra occupants in the basement, attic and utility room. A letter from the City's safety officer states that during an inspection on September 16, 2008, it was determined that the capacity of the electrical system was insufficient for the use of the excessive number of occupants and that there was evidence of unapproved wiring and damage to the circuitry. The landlord stated that a huge hole had been cut in the ceiling of the upper bedroom closet and a ladder was positioned at that location to provide access to the attic. Beds and clothing were found in the attic and its structure was modified by removing supporting beams. The landlord has submitted into evidence photographs which depict extensive damage to walls, doors, walls and appliances. The photographs also show that the electrical fixtures were ripped out of the ceilings and are missing. The landlord has also submitted into evidence quotations and receipts for the work done to restore the suite to a condition in which it could be rented and a utility bill with outstanding charges. The landlord stated that the appliances were damaged beyond repair. However, these appliances are approximately ten years old. The landlord advertised the availability of the suite upon completion of the repair work and found a tenant for January 01, 2009.

The landlord is claiming \$25,000.00 towards the costs he incurred which are as follows:

1.	Electrical repairs, light fixtures and permit	\$14,005.64
2.	Loss of income for October 2008	\$988.00
3.	Returned cheque charges	\$25.00
4.	Utility costs	\$718.02
5.	Repairs, clean up, dump charges etc	\$15,832.43
6.	Appliance (refrigerator and Stove)	\$2,077.94
7.	Filing fee	\$100.00
8.	Postage	\$23.21
9.	Travel expenses	\$774.88
10.	Advertising costs	\$50.00
	Total	<b>\$36, 212.82</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 for appliances, postage, travel expenses and contingency funds meet all the components of the above test. Based on the undisputed sworn testimony of the landlord I find that the landlord has established his claim for damages in the amount of \$25,000.00, which is the amount he is seeking on his application.

I order that the landlord retain the security deposit and interest of \$488.74 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 \$24,511.26. 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 **\$24,511.26**

Dated January 06, 2009.

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Dispute Resolution Officer