

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNR, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, a monetary order for damage or loss under the Residential Tenancy Act (Act), Regulation or Tenancy agreement, an order to retain the security deposit in partial satisfaction of the monetary claim, and is inclusive of an application for recovery of the \$100 filing fee for this application.

Despite having been served with the application for dispute resolution and notice of hearing and deemed to have been served in accordance with section 89 of the Act, the tenant did not participate in today's conference call hearing. The tenant did provide late document evidence to this matter, on January 09, 2009. The landlord reports the tenant is still in possession of the rental unit.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The landlord itemized their claim as follows:

- |  |               |
|--|---------------|
| 1). Loss of rental revenue for December 2008               | <b>\$1950</b> |
| 2). Loss of rental revenue for January 2009                | <b>\$1950</b> |
| 3). Compensation for loss (insurance deductible / repairs) | <b>\$5000</b> |
| 4). Recovery of filing fee                                 | <b>\$ 100</b> |

The landlord's testimony, under solemn affirmation is that they have not received any evidence from the tenant.

Based on the landlords testimony, rent in the amount of \$1950 is payable in advance by the thirteenth (13) day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$975.

This tenancy was the subject of a previous decision by a Dispute Resolution Officer (DRO) of the Residential Tenancy Branch, dated November 24, 2008, and amended December 05, 2008. That decision made findings for an Order of Possession to the Landlord effective not later than 1:00 p.m. on November 30, 2008, and a finding for a monetary claim by the landlord of \$2000 in which the DRO ordered the landlord to retain the tenant's security deposit as partial satisfaction of the claim. The landlord's testimony is that the Order of Possession was only recently permitted to be served upon the tenant and is in process of being enforced. Meanwhile, the tenant is still in possession of the rental unit and is not compensating the landlord for its use or occupancy to date, incurring a loss of revenue for the landlord.

Additionally, the landlord is seeking compensation for loss from the tenant, stemming from a \$5000 obligation of an insurance claim deductible for which the landlord was charged and paid. The landlord testified that the insurance claim was the result of major repairs to water damage incurred in the suppression of a grease fire in which the tenant's rental unit and a large number of adjoining units were affected. The landlord testified the repairs, which incurred the \$5000 deductible portion, were for damage caused by the tenant's actions, within the tenant's rental unit.

The landlord provided copies of a demand for the insurance claim deductible from the Restoration Company, to the landlord's property managers dated September 08, 2008. The landlord also provided a demand from the landlord's property managers to the landlord themselves dated October 24, 2008, as well as a bank draft receipt made out to the Strata Corporation by the landlord as payment of the \$5000 deductible, dated November 07, 2008. Consequently, the landlord is now passing the financial responsibility onto the tenant. In a previous decision by a Dispute Resolution Officer dated November 7, 2008, it states, "the Landlords agent confirmed that the landlord paid a \$5000 deductible on the insurance policy for the cost of restoration and the tenants have paid the landlord \$500 towards that deductible"

## **Analysis**

As the landlord did not receive any document evidence from the tenant I have not considered it.

Based on the landlord's testimony I find the tenant has not paid the landlord rent or compensation for occupancy for the months of December, 2008 and January 2009 and in this respect I find the landlord has established a claim for loss of revenue of **\$3900**.

A previous decision by a Dispute Resolution Officer exhausted all of the security deposit in satisfaction of a previous monetary order.

In respect to the landlord's claim for compensation for the deductible paid as a result of insurance claim repairs, I cannot default to any provisions within the Tenancy Agreement, as advised by the landlord, because it this was not provided. However, I am guided by the Residential Tenancy Regulations Schedule Section 8 which states,

### **Repairs 8**

#### **(1) Landlord's obligations:**

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

#### **(2) Tenant's obligations:**

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant.

The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

Within the evidence and testimony provided to me by the landlord's agent and in the absence of any other evidence to the contrary, I find there is sufficient evidence that the tenant was likely responsible for the kitchen grease fire, having occurred within the tenant's rental unit. The trickle-down demand for recovery of the deductible, or 'self insured' portion of the costs for repairs fell on the landlord, and the landlord paid it. I find the tenant is responsible to make the landlord whole for this financial loss, and therefore I find the landlord, in this regard, has established a claim in the amount of **\$4500**.

The landlord is also entitled to recovery of the **\$100** filing fee, for a total entitlement claim of **\$8500**.

### **Conclusion**

I grant the landlord an order under section 67 for the amount of **\$8500**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 03, 2009