



Dispute Resolution Services

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

Decision

Dispute Codes:

<u>MNR</u>	Unpaid Rent or Utilities
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was re-convened as a re-hearing of the original application which was heard on December 4, 2008. the tenant did not attend the initial hearing and made application for a review which was granted in a decision dated January 5, 2009. This hearing was set to deal with an Application by the landlord for a monetary order for unpaid rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. The landlord was also seeking to have a garnishment order dated October 8, 2008 that was granted by a higher court cancelled.

Both the landlord and tenant appeared and each gave affirmed testimony in turn. An advocate for the tenant also appeared.

Preliminary Matter

The landlord's application has included a request that a garnishment order issued by a higher authority be cancelled.

Testimony from the participants indicated that there were two previous hearings. One was held on August 8, 2007 to hear the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent, an order to deduct the cost of emergency repairs from rent owed, an order to allow tenant to deduct cost of repairs services or facilities from the rent, a monetary order to compensate the tenant for emergency repairs, a monetary

order to compensate for damage and losses, an order that the landlord comply with the Act or agreement, an order to allow the tenant to sublet the unit. A finding was made during those proceedings that the tenant did not have the right under the Act to deduct the cost of alleged emergency repairs from the rent owed and the tenant's claims for damages were also dismissed. As the tenant's application was not successful, the landlord was granted an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent issued by the landlord.

A second hearing was held on January 31, 2008 on the tenant's application requesting the return of double the security deposit and compensation to the tenant for repairs made to the unit. The portion of the tenant's application requesting compensation for the repairs was dismissed. However, in regards to the security deposit claim, a monetary order was issued against the landlord and in favour of the tenant for the return of double the security deposit in the amount of \$1,664.81. Evidently this order was enforced by the tenant having obtained a garnishment order against the landlord. In regards to the landlord's request in the current application before me, that a garnishment be cancelled, this does not fall within my authority to determine under the Residential Tenancy Act. I also do not have the authority to order that the current monetary order be set off by the amount owed relating to the garnishment. Therefore, I am only at liberty to consider the landlord's current claim of rent owed and damages or loss that is the subject of this application before me and I will issue an order, if supported, for an amount that reflects the landlord's entitlement for compensation under the Residential Tenancy Act, without regard to other proceedings and enforcement matters that fall outside of this Act.

Issue(s) to be Decided

The landlord was seeking a monetary order for rental arrears for the four-month period from June 16 2007 to October 15, 2007. The landlord was also seeking compensation for a loss of rent from October 16, 2007 to November 1, 2007 and compensation for electrical repairs and changing the locks.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears owed, damages or loss of rent. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amount of rent being claimed is validly owed by the tenant to this landlord?
 - Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

Background and Evidence

The landlord testified that the tenancy began on September 15, 2006 and ran mid-month to mid month and that the tenancy ended on September 20, 2007. The landlord testified that the landlord was seeking a monetary order for rental arrears including: \$1,650.00 rent owed for the period from June 16 to July 15, 2007, \$1,650.00 rent owed for the period from July 16 to August 15, 2007, \$1,650.00 rent owed for the period from August 16 to September 15, 2007, \$1,650.00 rent owed for the period from September 16 to October 15, 2007. The landlord was also seeking compensation for a loss of rent of \$825.00 for the period from October 16, to November 1, 2007, when the unit was finally rented. The landlord is claiming \$84.80, 172.47, and 237.43 compensation totaling \$494.70 for 3 electrical repairs, \$204.05 cost for changing the locks and \$100.00 for filing this application.

Submitted into evidence were a copy of the tenancy agreement, copies of communications between the parties, a sworn statement by a contractor regarding damage to the house that required work completed at the end of October 2008, receipts for electrical repairs and locks. Also submitted into evidence were photographs, receipts of expenditures by the tenant for flooring and plumbing repairs, a letter from a neighbour regarding the drainage problems and plumbing non-compliance, a hand-written chronology by the tenant of rental payments and repair issues with dates and copies of previous dispute resolution decisions.

The landlord testified that the tenant remained in the unit until September 20, 2008 and that the residence later required a number of repairs that took until the end of October to complete. The landlord testified that this included window replacement, repair to the

door, disposal of a metal gazebo, wall repairs and painting. The landlord testified that the residence also needed repairs to the laundry room plumbing and electrical wiring where the tenant had removed the washer and dryer to an area outside of the room then installed and later removed a sink in order to sublet part of the home to another party. The landlord testified that the tenant had apparently altered the wiring to hook up a stove which later required several service calls before the problem could be identified and corrected by electricians. The landlord testified that no claim is being made for the costs of some of the repair work, however it delayed the re-renting of the unit and the landlord feels that this warrants compensation.

The tenant conceded that rent was not paid from June 16, 2007 onwards but testified that the landlord's claim for rent is not supported in light of the fact that the tenant was required to pay for plumbing repairs that occurred due to substandard and noncompliant plumbing issues. The tenant also disputed the landlord's claim for reimbursement of the locks and re-wiring as these related to re-keying and appliance maintenance that fall under the landlord's responsibility under the Act. The tenant conceded that some holes were put in the walls but that this would have only required minimal repair. The tenant also admitted that a sink had been installed and removed and that a gazebo had been left on the premises. The tenant acknowledged that the washer and dryer were removed by the tenant but stated that they could not be re-installed in the laundry room due to the substandard plumbing so they were left outside. The tenant denied altering the electrical wiring and plumbing during the tenancy to create a rentable suite and pointed out that an "illegal" suite had previously been situated in the building but had been removed prior to the tenant's tenancy.

The tenant testified that the unit could have been cleaned and restored to the original condition by the tenant within a few hours, but that this opportunity was never given because the locks were changed on September 20, 2007 and the tenant was denied further access. The tenant testified that some of the work the landlord did after the end of the tenancy was to improve, rather than repair, the residence such as the repainting of the entire unit. The tenant testified that the rental unit was improved and its value enhanced by the tenant's installation of new flooring and trim at the tenant's own cost.

Analysis

Rental Arrears

Both parties were in agreement regarding the rental rate and the fact that rent was not paid for the period from June 16, 2007 to October 15, 2007 and that the tenant vacated on September 20, 2007.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I note that in a previous decision, the Dispute Resolution Officer made a finding that he tenant was not entitled to deduct any portion of the rent and I am not at liberty to rule otherwise. Therefore, according to the Act, I find that when the tenant left on September 20, 2007, the tenant was in rental arrears for rent owed for the period from June 16 to July 15, 2007, the period from July 16 to August 15, 2007, the period from August 16 to September 15, 2007 and the period from September 16 to October 15, 2007, totaling four months. I find that the landlord is therefore entitled to monetary compensation in the amount of \$6,600.00 for rental arrears owed by the tenant at the end of the tenancy.

Loss of Rent

In regards to the landlord's claim for the loss of a portion of the monthly rent for the period from October 16, 2007 until the unit was re-rented on November 1, 2007, and any other claims by the landlord for monetary compensation for loss or damage to the suite, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

I note that there would be a violation of the Act under section 37 (2)(a) should the tenant fail to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear upon vacating it and the tenant would be liable for any costs or losses incurred by the landlord that flow from the tenant's failure to comply with the Act.

However, it is important to note that in a 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

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. 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 respondent. 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

In this instance I find that the landlord was left with some tasks that needed to be done before the landlord could re-rent the rental unit to a new occupant. I find that this work was primarily due to the tenant and that it would logically have required some time to accomplish particularly as the landlord had to rely on specialty trades for the bulk of the work. I note that the notarized statement from a contractor provided details about the nature of the damage caused by the tenant and confirmed that the cleaning and repairs were not fully completed until almost the end of October 2007 and an email dated

October 19, 2007 from the caretaker to the landlord advised that the unit was completed and ready to show.

I find that the landlord's claim for loss of rent for the period from October 16, 2007 until November 1, 2007 has satisfied all elements of the test for damages above. I find that the landlord is entitled to a pro-rated amount of \$867.95 representing rental losses incurred by the landlord to November 1, 2007.

Other Damages Claimed

In regards to the landlord's claims for the costs for wiring, I find that the invoice of \$84.80 to fix the stove circuit justifies compensation. However I accept the tenant's testimony that the two bills totalling \$409.90 relating to the stove repairs do not warrant compensation by the tenant nor does the invoice for \$204.05 for re-keying the locks. Therefore, I find that the landlord is entitled to compensation of \$84.80 for damages and the remaining portion of the claim for \$613.95 is dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$7,652.75 comprised of \$6,600.00 rental arrears, \$867.95 loss of rent, \$84.80 damages and the \$100.00 fee paid by the landlord to file this application. I grant the landlord a monetary order under section 67 of the *Act* for \$7,652.75. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

February 2009

Date of Decision

Dispute Resolution Officer