



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, MNR, MNSD, MNDC, FF.

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession pursuant to Section 55;
- A monetary order to recover unpaid rent and for damages, pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee for Arbitration pursuant to Section 72.

The notice of hearing dated January 12, 2009 was served on the tenant on January 12, 2009 by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord testified that the tenant had abandoned the suite on or about January 18, 2009 and hence the landlord withdrew the portion of the application for an order of possession. 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 unpaid rent, cost of repairs, the filing fee, and to retain the security deposit in partial satisfaction of this claim?

Background and Evidence

The landlord testified that the tenancy started on November 01, 2008 and the tenant paid a security deposit of \$750.00 on October 18, 2008. The monthly rent was \$1500.00 due in advance on the first day of the month and did not include utilities. In January 2009, the tenant failed to pay rent and utilities and the landlord served the tenant with a ten day notice to end tenancy. This notice was served on the tenant on January 06, 2009 in person. The landlord filed this application on January 12, 2009.

The landlord testified that on January 18, 2009, the landlord visited the rental suite and upon finding no response to a knock on the front door, the landlord spoke to the neighbour, who advised the landlord that the tenant had moved out on or about January 16, 2009. The landlord entered the suite and found it in a state of disrepair, dirty and strewn with garbage and abandoned items. The landlord incurred costs to restore the suite to a condition in which it could be rented out. The landlord mitigated the landlord's losses by finding new tenants for February 01, 2009 even though the repairs were not fully finished. The landlord stated that the tenant has not made any contact with the landlord.

The landlord has submitted into evidence photographs that depict the condition of the suite as the tenant left it. There is considerable damage to the walls and doors, garbage strewn throughout the suite and items of furniture left behind. The landlord has also submitted into evidence utility bills and estimates to repair and clean the suite and is making the following claim:

1.	Rent for January 2009	\$1500.00
2.	Utilities for November 01 – December 12, 2008	\$292.44
3.	Utilities for December 12 – January 16, 2009	\$497.74
4.	Repairs to the walls	\$1701.00
5.	Doors	\$300.15
6.	Removal of garbage	\$150.00
7.	Cleaning	\$150.00
8.	Filing fee	\$50.00
	Total	\$4641.33

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. Based on the undisputed sworn testimony of the landlord, I find that the landlord's claim for the above items meets all the components of the above test. I find that the landlord has established a claim for damages in the amount of \$4641.33, 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 \$752.31 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 \$3889.02. 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 **\$3889.02**.

Dated February 11, 2009.

Dispute Resolution Officer