

## **DECISION AND REASONS**

**Dispute Codes:** OPR, MNR, MNSD, MNDC, MND, 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 February 03, 2009 was served on the tenant on February 06, 2009 by registered mail. 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. The landlord testified that the tenant had abandoned the suite on or about February 11, 2009 and hence the landlord withdrew the portion of the application for an order of possession.

### **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**

Based on the sworn testimony of the landlord, the facts are as follows:

The tenancy started on July 01, 2008. The tenant paid a security deposit of \$425.00 on June 23, 2008. The rent was \$850.00 due in advance on the first day of the month.

The rental unit was completely renovated two years prior to the tenant moving in.

A move in inspection, signed by the tenant on July 01, 2008 indicates that the suite was in good condition. On November 06, 2008, the landlord served the tenant with a one month notice to end tenancy for cause, with an effective date of December 31, 2008. In January 2009, the tenant failed to pay rent and advised the landlord of intentions to move out on January 31, 2009. The landlord attempted to conduct a move out inspection on this date without success. The landlord posted a 24 hour notice on this day and visited the suite on February 01, 2009. The tenant was not in and the landlord

entered the suite using the landlord's key. There were three guests of the tenant sleeping in the apartment and one of them started yelling at the landlord who left immediately. The tenant called the landlord and made an appointment for the next day, but was not in a fit state to conduct the move out inspection. The landlord served the tenant with another 24 hour notice and took pictures of the unit on February 06, 2009. The last of the tenant's guests vacated on February 11, 2009, leaving the unit dirty, damaged and in a state of disrepair.

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 suite is currently undergoing repairs and will not be available to rent for the remainder of the month of February. The landlord has also submitted into evidence invoices to repair and clean the suite and is making the following claim:

1.	Rent for January 2009	\$850.00
2.	Loss of income for February 2009	\$850.00
3.	Suite cleaning	\$210.00
4.	Garbage removal	\$488.25
5.	Suite and ceiling Painting	\$829.50
6.	Carpet replacement	\$1,231.65
7.	Carpet removal, installation and disposal	\$321.31
8.	Blinds	\$375.20
9.	Door	\$100.00
10.	Deadbolt and key replacement	\$165.00
	<b>Total</b>	<b>\$5420.91</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. 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. Since the carpet was two years old and based on the useful life of a carpet to be ten years, I find that the landlord is entitled to \$985.00 towards the replacement of the carpet, this being approximately what the carpet should have been worth at the end of the tenancy. I find that the landlord has established a claim for damages in the amount of \$5224.26, which is the amount the landlord is seeking on the application and includes the filing fee of \$50.00.

I order that the landlord retain the security deposit and interest of \$428.34 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 \$4795.92. 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 **\$4795.92**

Dated February 13, 2009.

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Dispute Resolution Officer