



# Dispute Resolution Services

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

## Decision

Dispute Codes: MND MNR MNSD MNDC FF

## Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord's agent and the tenant both participated in the teleconference hearing.

## Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

## Background and Evidence

The tenancy began on March 1, 2008, with monthly rent of \$1100. On February 28, 2008, the landlord collected a security deposit from the tenant in the amount of \$550. On November 1, 2008, an incident arose involving damage caused to common property in the building by an alleged guest of the tenant. On November 18, 2008 the landlord sent an invoice to the tenant for costs the landlord claimed arose as a result of the incident.

The tenant's December rent cheque was returned for insufficient funds, and on December 16, 2008 the landlord served the tenant with a notice to end tenancy for non-payment of rent. On December 23, 2008 the tenant paid the rent for December and also applied to cancel the notice to end tenancy. The hearing for that matter was scheduled for January 27, 2009. On January 8, 2009, the tenant attended at the landlord's office, informed the landlord that she had vacated, and returned one set of keys. The tenant's application to cancel the notice to end tenancy was dismissed on

the basis that the tenant had moved out. The tenant returned the second set of keys on January 19, 2009.

The landlord has claimed monetary amounts against the tenant as follows:

- 1) \$684.38 in costs arising from the incident on November 1, 2008

The landlord submitted that the tenant's boyfriend allowed two guests to enter the building, and one of the two guests damaged the common area of the building. The landlord submitted as supporting evidence an agreement signed by the tenant which states, "if a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible..."

- 2) \$2200 in unpaid rent and lost revenue for January and February 2009

The tenant did not pay rent for January 2009, she moved out without notice on January 8, 2009 and she did not return the second set of keys until January 19, 2009. The landlord provided documentary evidence that they began advertising on January 8, 2009 to attempt to re-rent as soon as possible, and that they lowered the rent by \$50 but they were still unable to re-rent before March 1, 2009.

- 3) \$25 for NSF fee for December 2008 rent cheque

The landlord provided a copy of the tenancy agreement, which allows for a \$25 NSF fee, as well as a copy of the tenant's returned December 1, 2008 rent cheque.

- 4) \$110 for late rent payment fee

The landlord provided a copy of the tenancy agreement, which states that late payment of rent is charged at \$5 per day; the tenant failed to pay the rent due on December 1, 2008 until December 23, 2008.

- 5) \$150 for Repairs and Materials

The tenant signed the move-out condition inspection report on January 19, 2009, and acknowledged that there were 9 light bulbs burnt out, damage to the flooring, walls and

refrigerator. The tenant agreed to allow the landlord to retain \$150 from her security deposit to pay for the damage noted on the report.

6) \$67.34 for the purchase and installation of halogen light bulbs

The tenant purchased some incandescent bulbs but did not install them or purchase halogen light bulbs.

The tenant's response to the landlord's claim was as follows.

The tenant disputed the amount claimed for the November 1, 2008 incident. The tenant was not present at the time, but the tenant's boyfriend was in her suite. The tenant's boyfriend buzzed in a co-worker of his, and another man came into the building with the co-worker. When her boyfriend opened the apartment door, he saw the other man, who appeared to be drunk or high on drugs. Her boyfriend told the man to leave, and the man became violent and began damaging the hallway of the building. The man forced his way into the tenant's apartment and broke her coffee table. The tenant's boyfriend called the police, and the man was arrested and charged with breaking and entering. The tenant's position was that neither she nor her boyfriend, as her guest, was responsible for allowing the man on the premises (item 1).

The tenant disputed the amount claimed for unpaid rent and lost revenue for January and February 2009 because she moved out based on information she had received about her application to cancel the landlord's notice to end tenancy. The tenant believed, based on the information she received, that her application would not be successful, and so she moved out pursuant to the notice to end tenancy (item 2).

The tenant acknowledged that her December 1, 2008 rent cheque was cancelled and that the landlord is entitled to the NSF fee claimed (item 3).

The tenant acknowledged signing the move-out inspection report and agreeing that the landlord may retain \$150 from the security deposit to cover the damages noted (item 5).

The tenant disputed the amount claimed for light bulbs, as halogen bulbs were burnt out at the start of the tenancy and brought to the landlord's attention, and they were never replaced. At the end of the tenancy the tenant left two boxes of halogens and

some incandescent bulbs, but did not install them (item 6).

### Analysis

In considering all of the evidence, I find as follows.

#### 1) damages for the November 1, 2008 incident

The tenant's boyfriend did not allow the man to enter the building, and he immediately took steps to seek to have the man leave the premises. I do not accept the landlord's position that the man who caused the damage was "visiting" or "admitted" into the building by the tenant or her boyfriend. I therefore dismiss this portion of the landlord's application.

#### 2) unpaid rent and lost revenue

The tenant may have received some incorrect information regarding her application to cancel the landlord's notice to end tenancy for unpaid rent. However, the tenant chose to move out of the rental unit without written notice, and the landlord took all reasonable steps to attempt to re-rent as soon as possible. I therefore find that the landlord is entitled to \$2200 for unpaid rent and lost revenue for January and February 2009.

#### 3) \$25 NSF fee

The landlord is entitled to this amount.

#### 4) \$110 late rent payment fees

A tenancy agreement may provide for a maximum late fee of \$25. As the clause in this tenancy agreement exceeds the maximum allowable late fee, that clause of the tenancy agreement is void. I therefore dismiss this portion of the landlord's claim.

#### 5) \$150 for materials and damages

The tenant acknowledged that the landlord was entitled to this amount.

6) \$67.34 for light bulbs

Burnt out light bulbs were noted in the move-out inspection report, and presumably were included in the amount claimed for materials and damages under item 5. The landlord acknowledged that the tenant left some incandescent bulbs. I do not find it reasonable that the landlord claim \$45 for the removal and replacement of burnt bulbs. For all of those reasons, I dismiss this portion of the landlord's claim.

The landlord is also entitled to recovery of the \$50 filing fee, for a total claim of \$2425.

#### Conclusion

I order that the landlord retain the deposit and interest of \$556.94 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1868.06. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 24, 2009.