

# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** MNR, MND, MNDC, MNSD, FF

### **Introduction**

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

- A monetary order for rent for December 2008, loss of income for January and February, due to the tenant breaking a six month lease, pursuant to Section 67;
- A monetary order for cleaning and repair costs, pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72

Both parties attended the hearing and were 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**

Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement? Is the landlord entitled to a monetary order to recover rent and loss of income for the month of January and February 2009? Did the landlord make adequate attempts to mitigate losses? Is the landlord entitled to retain the security deposit in satisfaction of this claim? Is the landlord entitled to the costs of repairs and cleaning and to the recovery of the fee to file this application?

### **Background and Evidence**

Based on the sworn testimony of both parties the facts are as follows:

The tenancy started on September 01, 2008 for a fixed term of six months ending on February 28, 2009. Prior to moving in, the tenant paid a security deposit of \$650.00. The monthly rent was set at \$1325.00 due in advance on the first day of each month. On November 17, 2008, the tenant gave the landlord notice to end tenancy effective December 15, 2008 and paid \$600.00 for rent for December.

The landlord stated that the landlord started advertising the availability of the suite on line on November 18, 2008 and then in the local newspaper from December 03, 2008 to January 20, 2009 and showed the suite to approximately 10 to 15 prospective tenants, before finding a tenant for March 01, 2009. The landlord submitted into evidence verification of having incurred a cost of \$130.62 for advertising.

The landlord also stated and the tenant agreed that the tenant did not pay utilities for the months of October, November and December 2008 and the landlord is claiming \$873.44 for these months. The landlord is also claiming and estimated amount of \$200.00 for the month for February 2009.

The landlord stated that the unit was left dirty and in need of repairs and the landlord spent 16 hours doing repairs and 8 hours cleaning out the suite including taking garbage to the dump. The landlord submitted into evidence photographs of damage and garbage in the suite and requested to retain the security deposit to cover the time and costs incurred by the landlord. However, the landlord did not provide the tenant with a copy of this evidence and the tenant stated that the co tenant had cleaned the suite and disputed the landlord's claim of \$650.00 towards repairs and cleaning.

The landlord is claiming the following:

1.	Balance of rent for December 2008	\$725.00
2.	Loss of income for January 2009	\$1325.00
3.	Loss of income for February 2009	\$1325.00
4.	Utilities	\$1073.44
5.	Advertising	\$130.62
6.	Cleaning and repairs	\$650.00
7.	Filing fee	\$50.00
	<b>Total</b>	<b>\$5279.06</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**

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 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.

I find that the landlord incurred a loss of income due to a violation of the terms of the Tenancy Agreement, on the part of the tenant. The tenant entered into a fixed term lease and ended the tenancy prior to the end of the lease. I find that the landlord made adequate attempts to mitigate losses by advertising for a new tenant. I find that the landlord did not serve the tenant with the evidence related to the landlord's claim for repairs and cleaning and therefore this portion of the landlord's claim is dismissed. Based on the sworn testimony of both parties I find that the balance of the landlord's claim meets all the components of the above test and hence the landlord has established a claim for damages in the amount of 4629.06, which is the amount the landlord is seeking minus the landlord's claim for repairs and cleaning and includes the filing fee.

I order that the landlord retain the security deposit and interest of \$653.25 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 \$3975.81. 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 **\$3975.81**

Dated March 10, 2009.

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Dispute Resolution Officer