

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, 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 October 2008 and loss of income for November 2008, due to the tenant breaking a fixed term tenancy, pursuant to Section 67;
- A monetary order for cleaning and repair costs, pursuant to Section 67;
- An order to recover the filing fee pursuant to Section 72

The notice of hearing dated January 12, 2009 was served on the tenant on January 16, 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.

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 months of October and November 2008 respectively? Did the landlord make adequate attempts to mitigate losses? 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 undisputed sworn testimony of the landlord the facts are as follows:

The tenancy started on March 31, 2008 for a fixed term of twelve months ending on March 30, 2009. Prior to moving in, the tenant paid a security deposit of \$750.00 by a cheque, which was returned to the landlord for insufficient funds. The monthly rent was set at \$1500.00 due in advance on the first day of each month.

The tenant paid partial rent for October in three instalments of \$200.00, \$300.00 and \$100.00 on October 03, 13 and November 15, 2008 and owes the landlord \$900.00. On October 23, 2008, the tenant gave the landlord notice to end tenancy on October 31, 2008 for financial reasons and moved out on November 02, 2008. The landlord placed an advertisement in the local paper on November 03, 2008 and found a tenant for December 01, 2008. The landlord found damage done to the suite and has submitted into evidence photographs of the same accompanied by receipts to verify the costs incurred to fix the damage.

The landlord is claiming the following:

1.	Rent for October 2008	\$900.00
2.	Loss of income for November 2008	\$1,500.00
3.	Advertisement	\$72.60
4.	Replace broken window	\$227.50
5.	Replace weather stripping	\$8.35
6.	Replace sink plug	\$12.76
7.	Paint	\$35.24
8.	Carpet cleaner rental	\$35.74
9.	Carpet Shampoo	\$8.92
10.	Pet Odour remover	\$14.55
11.	Floor Sealant	\$6.24
12.	Carpet pad	\$11.19
13.	Carpet cleaning	\$50.00
14.	Filing fee	\$50.00
	Total	\$2933.09

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 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. Based on the sworn verbal and documentary evidence of the landlord, I find that 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 2933.09, which is the amount the landlord is seeking and includes the filing fee.

Conclusion

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$2933.09**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 16, 2009.

Dispute Resolution Officer