

Dispute Resolution Services

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

DECISION AND REASONS

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

Introduction

The landlord made reference in his application, to a hearing which took place on November 03, 2008 to resolve an earlier dispute between both parties. Applications were made by both the tenant and the landlord, at that time. The tenant had applied to cancel a notice to end tenancy for cause (extraordinary damage to the kitchen cabinets). The landlord had applied for an order of possession and for costs to repair the damage to the kitchen cabinets.

During that hearing the dispute resolution officer granted the landlord an order of possession, but dismissed the landlord's monetary claim with leave to reapply, as the landlord had not yet completed the estimates or the actual repairs.

The hearing conducted on this date, dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for loss of income for the months of December 2008 and January 2009 and to recover the cost to replace the kitchen cabinets, 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.

Subsequent to the hearing on November 03, 2008, the landlord served the tenant with an order of possession on November 06, 2008 for causing water damage to the kitchen cabinets, by failing to report a leak. The tenant moved out on November 26, 2008.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord met his burden of proving that a loss was incurred due to the tenant's violation of the *Act* or tenancy agreement? Is the landlord entitled to a monetary order for loss of income and to recover the filing fee? Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The month-to month tenancy started on May 21, 1993. Prior to moving in, the tenant paid a security deposit of \$475.00. At the time the tenancy ended, the monthly rent was \$1185.00, due on the first day of each month.

The landlord testified that on October 22, 2008, after the water damage had occurred, a cabinet maker (SW) visited the suite to take measurements of the kitchen cabinets and provided the landlord with a quotation to replace the cabinets. On November 05, 2008, the landlord hired SW to complete the job. SW revisited the suite on November 17, 2008 for additional measurements and installed the cabinets on January 06, 2009.

The landlord stated that the delay in installing the cabinets was a result of several factors which included the tenant not moving out until November 26, 2008, the busy schedule of SW and the extreme weather in December 2008.

The landlord stated that he started advertising the availability of the suite from January 06, 2009 but did not find a new tenant for the months of January, February and March. A new tenant has been found for April 15, 2009.

The landlord stated that the suite remained vacant for the months of December and January, due to the delay in installing the kitchen cabinets and therefore the tenant is responsible for the loss of income that the landlord incurred. The landlord is making a claim in the amount of \$2370.00 which is the equivalent of two month's rent.

The landlord has filed a quotation from SW dated October 21, 2008 in the amount of \$1,537.20 for the replacement of the cabinets and a time sheet that confirms that plumbing work was done by the landlord's maintenance staff on January 03 and 06, 2009.

The landlord is making the following claim:

1.	Loss of income for December and January	\$2,370.00
2.	Cost to replace kitchen cabinets	\$1,537.20
3.	Plumbing repair	\$180.00
4.	Filing fee	\$50.00
	Total	\$4132.70

The tenant testified that he cooperated with the landlord and allowed SW access to the suite to measure the cabinets. The tenant argued that since neither SW nor the landlord contacted him after November 17, 2009 regarding further work to replace the cabinets, he was not responsible for the delay in installing the cabinets.

The tenant stated that he had paid rent for November and advised the landlord that he would hand over the keys on November 21, 2008. The tenant acknowledged that he got delayed and finally moved out on November 26, 2008.

The tenant stated that the advertisements for the availability of the suite, indicate that the suite was renovated. The landlord acknowledged that the suite was painted, the carpets and windows were cleaned and the decks were repaired.

The tenant drew my attention to the timesheet that was filed by the landlord, which showed that 7.5 hours of deck repair work was done on January 15, 2009. The tenant stated that the delay in renting the suite was due to the renovation work.

The tenant admitted to being responsible for the damage caused to the kitchen cabinets by water leaks that he neglected to report to the landlord. He stated and the landlord agreed that the kitchen cabinets were 18 years old. The tenant argued that he was liable only for the prorated cost to replace the cabinets.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, 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 other party 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.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord acknowledged that the other repair and renovation work was done in the suite in the month of December. The evidence filed by the landlord indicates that the renovation of the suite was still in progress on January 15, 2009.

In addition, the tenant did not refuse SW access to the suit nor did he hamper SW in any way from installing the kitchen cabinets. I find that on a balance of probabilities, the delay in installing the cabinets was due to the non availability of SW combined with the extreme weather in December 2008 and not due to violation of the *Act* or tenancy agreement on the part of the tenant.

The tenant advised the landlord in writing on November 14, 2008 that he would be moving out by November 21, 2008. The landlord did not advertise the availability of the suite until January 06, 2009 and argued that he waited for the cabinets to be installed before he advertised. I find that the landlord did not make reasonable efforts to mitigate his losses by attempting to find a tenant for the months of December and January.

I find that the suite was vacant in December for the following reasons:

1. The suite was being renovated.
2. The landlord did not advertise the availability of the suite, prior to January 06, 2009

Accordingly, I find that the tenant is not responsible for the loss of income that the landlord incurred and therefore the landlord's claim for \$2370.00 is dismissed.

Regarding the landlord's claim for the cost to replace the kitchen cabinets, I find that the tenant is responsible for the damage to the cabinets. The landlord incurred a cost of \$1537.20. The cabinets were 18 years old and pursuant to the *Residential Tenancy Policy Guidelines* 37 the approximate useful life of kitchen cabinets is 25 years. Therefore, I find that the tenant is liable for the prorated cost of the cabinets in the amount of \$430.36

I also find that the landlord is entitled to the plumbing costs of \$180.00 and the filing fee of \$50.00. Overall, the landlord has established a monetary claim of \$660.36.

I order that the landlord retain the security deposit of \$475.00 plus interest of \$114.27 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 \$71.09. 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 **\$71.09**.

Dated April 08, 2009.

Dispute Resolution Officer