

# Dispute Resolution Services

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

## DECISION AND REASONS

**Dispute Codes:** *MNDC, FF*

### **Introduction**

This hearing dealt with an application by the landlord, for a monetary order for the cost of repairs, loss of income and to recover the fee to file this application, pursuant to Sections 67 and 72 of the Residential Tenancy Act.

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

### **Issues to be decided**

Is the landlord entitled to a monetary order for the cost of repairs, lost income and the filing fee?

### **Background and Evidence**

Both parties agreed on the following facts:

The tenancy started on June 01, 2008 for a fixed term of six months ending on November 30, 2009. The rent was \$1120.00 and included utilities. On the day of the move in, the tenant and landlord conducted a move in inspection. On August 29, 2008, the tenant wrote a note to the landlord on August 29, 2008 saying "*I will move out by Sep 30 2008*". The tenant moved out on September 29, 2008, two months prior to the end date of the fixed term tenancy. On that day, a move out inspection was conducted by both parties.

The tenant testified that during the move in inspection, she advised the landlord that the suite needed painting, the bedroom window handle was broken and the toilet was dirty. The landlord stated that, during the move in inspection, the suite was clean, the window handle was not broken but agreed that only some walls of the suite were painted prior to the start of the tenancy.

The landlord stated that during the move out inspection, he pointed out damage to the walls that required repair and the broken window handle. The tenant stated the scrapes and dents in the wall were present prior to the start of the tenancy and that she had not caused any damage to the walls during the tenancy of four months. She stated that she left the suite in a clean condition and the walls needed painting prior to the start of the tenancy and therefore she was not responsible for the cost of repairing or painting the suite.

The landlord stated that he attended to the repairs himself through the month of October. He advertised for a tenant on October 15, 2009 and found a tenant for November 01, 2009.

The landlord is claiming the following:

1.	Rent for October and November	\$2,240.00
2.	Labour to repair damage	\$448.00
3.	Materials for repair	\$80.00
4.	Filing fee	\$50.00
	Total	\$2,818.00

### **Analysis**

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim must fail.

The landlord did not file any documentary evidence to support his claim for the cost of repairs and the tenant stated that she did not cause any damage to the walls and therefore was not responsible for the cost of the repairs.

I find that the landlord has not succeeded in meeting the burden of proof required to prove that monetary compensation is justified under the *Act*. Therefore, the landlord's claim in the amount of \$528.00 for labour and materials is dismissed.

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 two months prior to the end date of the lease which was November 30, 2009. I find that the landlord made adequate attempts to mitigate losses by advertising and finding a new tenant for the month of November and therefore suffered a minimal loss of income in the amount of rent for the month of October. I find that the landlord is entitled to rent for the month of October in the amount of \$1120.00.

As the landlord has succeeded in establishing a claim for a portion of his application, I find that he is entitled to a portion of the filing fee. Accordingly, I award the landlord \$25.00 toward the filing fee.

### **Conclusion**

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$1145.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 02, 2009.

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Dispute Resolution Officer