

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a Monetary Order for unpaid rent, for damages to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for this application.

Service of the hearing documents, by the landlord to the tenant was done in accordance with section 89 of the *Act*, sent via registered mail on March 17, 2009. Mail receipt numbers were provided in the landlord's verbal testimony. The tenant was deemed to be served the hearing documents on March 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent and damages to the rental unit
- Whether the landlord is entitled to a Monetary Order under section 38 of the *Act* to retain the security deposit in partial satisfaction of their claim
- Whether the landlord is entitled to a Monetary Order under section 72 of the *Act* to recover the cost of the filing fee

### Background and Evidence

The tenancy began on June 1, 2004 and was a month to month tenancy which ended on February 28, 2009. Rent was \$658.00 payable on the first of each month and the tenant paid a security deposit of \$297.50 on May 31, 2004.

Landlord (1) testified that the rent was in arrears for \$3.00, the documentary evidence supplied by the landlord did not describe what the \$3.00 was comprised of and none of the landlords could explain the \$3.00 arrears.

Landlord (1) testified that they are submitting a monetary claim for the cost of carpet cleaning, the cost to replace two doors, and costs to clean the rental unit.

The landlords could not answer why the move out inspection report was incomplete nor could they show where the move out inspection notates that two doors were damaged and needed replacing.

Landlord (3) testified that he did the move out inspection and that generally the bathroom, fridge, stove and carpets needed cleaning. Landlord (3) stated that the bathroom tiles needed cleaning as most tenants do not clean the tiles around the bath tub. Landlord (3) stated that he could not answer specifically to what required cleaning on the tiles. Landlord (3) testified that he could not answer specifically what cleaning was required to the stove and fridge. Landlord (3) testified that normally a rental unit would need four hours of cleaning if it involved the oven, so they usually billed \$72.00 for four hours of cleaning. Landlord (3) stated that \$72.00 was an estimate and that he couldn't prove how much it cost to clean the rental unit.

Landlord (1) testified that the actual cost to steam clean the carpets was \$62.95 and named the local carpet and upholstery cleaners who performed the work.

Landlord (1) stated that \$520.00 was an estimate to replace the doors and that it actually cost \$367.21 to replace the two doors. The landlords advised that they replaced the closet door and the bedroom door.

The tenant testified that he refused to sign the move out inspection report as he did not agree to the charges listed for cleaning the rental unit or the cost to repair the doors. The tenant stated that he did accidentally damage the bedroom door during his move out but that there was no damage caused to the closet door.

The tenant testified that he had made a verbal agreement with the landlord to deduct the actual cost of the carpet cleaning at the end of his tenancy.

The tenant disputed the landlords' testimony that the bathroom, fridge and stove required additional cleaning and the tenant did not speak to the \$3.00 owing for rent.

Landlord (2) confirmed that the tenant provided his forwarding address on their information form but could not confirm the exact date when she received this form back from the tenant. Landlord (2) testified that the form was required to be returned prior to February 15, 2009, that she does not recall it being late, but that she can only confirm that it was returned to her some time during February 2009.

### Analysis

In regards to a landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67 of the *Act*, the landlord would be required to prove that the tenant did not comply with the *Act* and that this non-compliance resulted in costs or losses to the landlord pursuant to section 7. It

is important to note that in a 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 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

With regards to the landlords' claim to recover the cost of the carpet cleaning, the tenant has confirmed that he agreed to allow the landlord to deduct the cost of professional carpet cleaning from the security deposit. I find that the landlord has satisfied all four tests for damage and loss and rule in the landlord's favor to claim \$62.95 for carpet cleaning.

Section 35 of the *Residential Tenancy Act* stipulates that the landlord must "complete" the move-out inspection form and based on the documentary evidence submitted by the landlord, the form is incomplete. The tenant declined to sign the move out inspection report as he did not agree to the charges listed on the form but this would not have prevented the landlord from filling out the rest of the inspection report completely. In the absence of documentary evidence which supports the existence of damages for which the landlord is claiming, the absence of evidence which proves the work has been performed and the absence of proof of the actual cost incurred to perform the repairs, I dismiss the landlord's claim for the cost to repair two doors, and for the cost of cleaning the rental unit, without leave to reapply.

I find that the landlord has failed to prove what the \$3.00 rental arrears consisted of and so I dismiss his claim for \$3.00 of rental arrears, without leave to reapply.

As the landlord was not primarily successful with his application I dismiss his claim to recover the filing fee from the tenant, without leave to reapply.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Carpet Cleaning	\$62.95
Less Security Deposit of \$297.50 plus interest of \$10.54	- 308.04
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$245.09</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim of \$62.95 and HEREBY ORDER THE LANDLORD to pay the tenant immediately upon receipt of this decision, the balance of the security deposit in the amount of \$245.09.

A copy of the tenant's decision will be accompanied by a Monetary Order for \$245.09. The order must be served on the landlord and is enforceable through the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 08, 2009.

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Dispute Resolution Officer