

## **DECISION**

Dispute Codes      MNSD MNR MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain Monetary Order for unpaid rent, for damage to the unit, to keep all of the security deposit and to recover the cost of the filing fee from the tenants.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 28, 2009 and after the registered mail was returned to the landlord unclaimed by the tenants, the landlord served one of the male tenants personally on March 2, 2009. Mail receipt numbers were provided in the landlord's verbal testimony. The tenants were deemed to be served the hearing documents on April 2, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

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 or utilities and for damage to the rental unit
- Whether the landlord is entitled to a claim under section 38 of the *Act* to keep all or part of the security deposit

### Background and Evidence

The landlord testified that the tenancy was a fixed term tenancy commencing February 1, 2009 and was scheduled to end on January 31, 2010 but the tenants vacated the rental unit on March 11, 2009 after being issued a 10 Day Notice to End Tenancy for

unpaid rent. The rent was payable on the first of each month in the amount of \$1,350.00 and the tenants paid a security deposit of \$600.00 on February 6, 2009.

The landlord submitted a claim in the amount of \$2,627.04 which is comprised of \$1,200.00 for unpaid March rent, \$300.00 in unpaid utilities, carpet cleaning \$150.00, cleaning crews \$693.50, \$200.00 for a painter, \$77.54 for paint and repair supplies.

The landlord testified that they had a copy of the 10 Day Notice to End tenancy with them when they applied for dispute resolution but that they did not submit any evidence to the *Residential Tenancy Branch* in support of their monetary claim.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant 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, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord 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

In regards to the 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.

In the absence of documentary evidence in support of their claim, I find that the landlord has failed to prove the test of damage and loss as listed above and I hereby dismiss the landlord's application with leave to reapply.

Conclusion

I HEREBY DISMISS the landlord's application with leave to reapply.

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 29, 2009.

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Dispute Resolution Officer