



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MND

MNR

MNSD

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed, compensation for damages and loss and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on March 31, 2009, as confirmed by the evidence, the tenant did not appear.

A previous hearing was held on March 25, 2009, to deal with the landlord's application for the monetary claim. However, due to a service issue, the matter was dismissed with leave to reapply. The application before me was found to be properly served to the address provided by the tenant by registered mail, and it was determined that the matter will now proceed

### **Issue(s) to be Decided**

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed and for damage to the suite.

### **Background and Evidence**

The landlord testified that the tenancy began in October 2008, with rent set at \$625.00 and at which time the tenant paid a security deposit of \$300.00. The landlord testified that the tenant failed to pay any rent for January 2009, February 2009 and March 2009 and is in rental arrears for \$1,875.00, for which the landlord is claiming compensation. A signed tenancy agreement was submitted into evidence showing the monthly rental rate and payment of the deposit.

The landlord is also claiming \$300.00 in damages to the suite. The landlord testified that no move-in or move out inspection reports were completed. the tenancy agreement and proof of service or the Ten-Day Notice

### **Analysis**

Based on testimony from the landlord, I find that the tenant was in arrears for three months rent in the amount of \$625.00 for each month totalling \$1,875.00.

In regards to the landlord's 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 a contravention of the Act on the part of the respondent. 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.

In this instance, I find that the landlord has not met all of the elements of the test. Other than the verbal testimony, no evidence of the damage was submitted to this file. In addition, it was not established that the damage, even if accepted as existing, was caused by the tenant during the tenancy and finally the costs of the damage or loss was not verified. Therefore, the portion of the landlord's application requesting compensation for damage to the suite in the amount of \$300.00 must be dismissed.

I find that the landlord has established a total monetary claim of \$1,925.00 comprised rent of \$625.00 rental arrears for the month of January 2009, \$625.00 arrears for the month of February 2009, \$625.00 owed for the month of March 2009 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$301.13 in partial satisfaction of the claim leaving a balance due of \$1,623.87.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$1,623.87 This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

June 2009

Date of Decision

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Dispute Resolution Officer