

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to each Tenant on March 24, 2009.

The Landlord and both Tenants appeared, 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

Have the Landlord's proven their entitlement to a Monetary Order pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The verbal month to month tenancy began some time in 1999 with monthly rent payable on the 1<sup>st</sup> of each month in the amount of \$940.00. The Tenants paid a security deposit of \$480.00 on November 15, 1999. The Landlord did not conduct a move-in inspection report and did not conduct a move-out inspection report. These facts are not in dispute.

The Landlord testified that the Tenants occupied the rental unit until the end of August 2008, that they did not pay rent for June, July or August, 2008 but requested that their damage deposit be kept towards the rent payment for June 1 – 15, 2008. The Landlord stated that the Tenants moved into their new home sometime near the end of June 2008 but that they kept possession of the rental unit until August 18, 2008 as they had left a large amount of property and garbage in the house and in the garage. The Landlord claims that the Tenants did not return possession of the rental unit until the end of August.

The Tenants testified that they had lived in the rental unit for over 9 years and that they had been discussing purchasing the house from the Landlord in the spring of 2008. The Tenants stated that when they received the financing approval that the Landlord increased the asking price by \$50,000.00 so purchase did not go through.

The Tenants stated that they moved into their new home on June 15, 2008 and that the Landlord left the Country on June 22, 2008. The Male Tenant testified that he had a verbal agreement with the Landlord to allow the Tenants to leave some of their possessions in the rental unit and garage and that he paid the Landlord full rent for June, July and ½ rent for August 2008 and requested that the Landlord keep the security deposit for the balance due for August 2008. The male Tenant testified that he moved all of his possessions out of the house and into the garage during July 2008.

### 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 Tenants, 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.

The landlord has submitted a monetary claim in the amount of \$7, 294.87 and in support of this claim the Landlord has provided hand written receipts / invoices out of generic over the counter receipt books. On the receipts mentioned above 5 out of 6 of them do not display company names, nor do they show proper GST numbers or charges. The receipts from department stores range from dates beginning in August 2008 up to February 2009 and include items such as office and school supplies, candy, food, dish and laundry soap, and cookware. The Landlord also submitted a receipt from a tile company that is dated prior to when the Landlord claims she received possession of the rental unit.

I find that there was an agreement between the Landlords and Tenants to allow the Landlord to retain the security deposit.

In the absence of a move-in or move-out inspection report or pictures proving the condition of the rental unit, I find that the Landlord has failed to prove that loss or damage existed.

In the presence of the contradictory testimony on when the tenancy ended and when the Landlord regained possession of the rental unit I find that the Landlord has failed to prove the loss of rent as claimed.

Based on the above I find that the Landlord has failed to prove the 4 step test for damages as listed above and I hereby dismiss the Landlord's claim without leave to reapply.

As the Landlords were not successful in their claim I dismiss their request to recover the \$50.00 filing fee from the Tenants, without leave to reapply.

Conclusion

**I HEREBY DISMISS** the Landlord's application for a Monetary Order, without 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: June 24, 2009.

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Dispute Resolution Officer