

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the act, to keep all of the security deposit, 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*, sent via registered mail on April 17, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenants were deemed to be served the hearing documents on April 22, 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 her evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order and to retain the security deposit in partial satisfaction of their claim pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy began on April 15, 2008 and was scheduled to expire on April 30, 2009. Rent was payable on the first of each month in the amount of \$1,275.00. The Tenants paid a security deposit on April 15, 2008 in the amount of \$637.50.

The tenancy ended on March 31, 2009 after the Tenants provided proper notice to the Landlord. The Landlord is not seeking compensation for the Tenants breaking the lease early.

The Landlord testified that the Tenants provided their forwarding address on March 31, 2009, written on the move out inspection report.

The Landlord is claiming \$75.00 for carpet cleaning, \$129.00 for blind cleaning, \$15.00 for a lost laundry key, and \$50.00 for the filing fee.

### 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 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 did not provide documentary evidence in support of their claim. Based on the aforementioned I find that the Landlord has failed to prove the test for damages as listed above, and I hereby dismiss the Landlord's claim without leave to reapply.

As the Landlord was not successful with their claim, I hereby dismiss their request to recover the cost of the filing fee, without leave to reapply.

The Landlord is hereby ordered to disperse the Tenants' security deposit plus interest in accordance with Section 38 of the *Residential Tenancy Act*.

#### Conclusion

I HEREBY DISMISS the Landlord's application, 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: July 16, 2009.

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Dispute Resolution Officer