

## **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 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 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 June 5, 2009 and the amended application was mailed on July 31, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant was deemed to be served the hearing documents on June 10, 2009 and August 4, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The Tenant acknowledged receipt of original and the amended applications.

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

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy began on September 1, 1999 with the most recent fixed term set to expire on November 30, 2009. Rent was payable on the first of each month in the amount of

\$925.00 and the Tenant paid a security deposit in the amount of \$337.50 on September 1, 1999.

The Landlord testified that the most recent fixed term tenancy began on December 1, 2007 which included a provision that the Tenant could provide one month's notice to end the tenancy early without penalty. The Landlord advised that the Tenant provided verbal notice to end the tenancy in April 2009 with an end date of May 31, 2009.

The Landlord stated that a move-in inspection report was not completed and a move-out inspection report was not completed because the Tenant would not return the Landlord's calls to set up a move out inspection. The Landlord argued that he attended the rental unit on June 1, 2009 and the Tenant had vacated the rental unit without returning the keys or attending a move out inspection. The Landlord claims that he continued to call the Tenant to try and schedule a move out inspection after she had vacated but to no avail.

The Tenant argued that she moved out of the rental unit on May 31, 2009, that she left the keys on the kitchen counter, and the Landlord did not attend the rental unit on May 31, 2009 to conduct a move out inspection. The Tenant testified that she did not receive any telephone calls from the Landlord to schedule a move-out inspection.

The Landlord is claiming \$2,231.00 to repaint the rental unit as the Tenant repainted the unit, without permission, used dark colors of paint, and did not paint the unit properly. The Landlord referred to his picture evidence in support of his testimony that the painting was not done in a manner that the Landlord could re-rent the unit.

The Tenant testified that she painted the rental unit walls and cupboards, using dark colors, and that she did not have the Landlord's permission to paint the rental unit. The Tenant confirmed that she wrote the letter entered into evidence by the Landlord stating she would repaint the rental unit. The Tenant argued that she did not feel she should have to pay to have the rental unit painted at the end of her tenancy because she lived in the rental unit for ten years and it was never painted by the Landlord.

The Landlord has claimed \$264.60 for 2 1/2 hours of cleaning the rental unit and referred to his picture evidence in support of his claim.

The Tenant confirmed that she did not clean the rental unit. The Tenant testified that she took responsibility for the cleaning costs.

The Landlord testified that the Tenant failed to return the rental unit keys and mail box keys when she vacated the rental unit and that he had to pay \$133.93 to have keys changed and cut.

The Tenant argued that she left the keys on the counter of the rental unit and that she does not feel responsible for having new keys cut.

The Landlord is claiming \$335.00 for unpaid rent which is an accumulated amount resulting from the Tenant short paying her rent since November 2007. The Landlord referred to the tenant ledger he had submitted into evidence. The Landlord is also claiming \$925.00 for loss of rent for June 2009 stating that the rental unit was not suitable to re-rent for June 1, 2009.

### 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 doing whatever is reasonable to minimize the damage or loss

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.

The Landlord has testified that she did not complete a move-in or a move-out inspection report in contravention of sections 23 and 35 of the *Act*. I note that sections 24 and 36 of the *Act* stipulate that if the Landlord fails to complete the move-in and move-out inspection report then the Landlord's right to claim against the security and pet deposits is extinguished; however this does not prevent the Landlord from claiming damage or loss under section 67 of the *Act*.

Based on the testimony and evidence before me I find that the Tenant has contravened section 37 of the *Act* as she did not leave the rental unit reasonably clean and undamaged. I also note that the Tenant admitted that she painted the rental unit without the Landlord's permission to do so and provided the Landlord with a written notice stating the Tenant would repaint the rental at the end of the tenancy, to return the rental unit to its original colors. I do not accept the Tenant's argument that the Tenant's violation was somehow excused due to the Landlords' alleged failure to paint the rental unit during her tenancy.

Based on the aforementioned I find that the Landlord has proven the test for damage and loss as listed above and I hereby approve his claim for painting in the amount of \$2,231.00.

The Tenant has admitted responsibility for the cost of cleaning the rental unit. Based on the above I find that the Landlord has proven his claim for damage or loss I approve his claim in the amount of \$264.60.

The Landlord has claimed the cost to re-key the locks of the rental unit and mailbox claiming that the Tenant failed to return her keys at the end of the tenancy, while the Tenant claimed the keys were left in the rental unit. I note that the locks were not re-keyed until June 24, 2009, four weeks after the tenancy ended and I question if the Landlord would have left the rental unit unsecured for that period of time. I also note that the rental unit was re-rented as of July 1, 2009. Section 25 of the Act states that it is the Landlords responsibility to pay all costs associated with changing locks and keys at the beginning of a new tenancy. Based on the aforementioned I find that the Landlord has failed to prove the test for damage and loss and I hereby dismiss his claim of \$133.93.

The evidence supports the Landlord's claim that the Tenant failed to pay rent in full since November 2007 leaving a balance carried forward each month for a total accumulated balance of \$335.00 unpaid rent at the end of the tenancy . I find that the Tenant has failed to pay the rent in contravention of section 26 of the Act that states that a tenant must pay rent when it is due. Based on the above I find that the Landlord has proven the test for damage or loss and I hereby approve his claim of \$335.00 of unpaid rent.

With respect to the Landlord's claim of \$995.00 for loss of June 2009 rent, I note that the painting invoice the Landlord submitted into evidence is dated June 10, 2009 and the cleaning invoice is not dated until June 23, 2009, thirteen days later. Section 7 of the Act states that the Landlord must do whatever is reasonable to minimize his losses and in this case I find that if the painting was completed by the tenth of the month the Landlord should have arranged for cleaning right away in attempts to re-rent the unit for June 15, 2009. I find that the Landlord has failed to mitigate his losses and as a result

he has failed to prove the test for damage or loss and I hereby dismiss his claim for loss of June 2009 rent.

As the Landlord has been primarily successful with his claim I find that he is entitled to recover the \$50.00 filing fee from the Tenant.

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

Cost to paint the rental unit	\$2,231.00
Cost to clean the rental unit	264.60
Unpaid Rent accumulated total per ledger	335.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$2,880.60</b>
Less Security Deposit of \$337.50 plus interest of \$32.43	-369.93
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,510.67</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$2,510.67. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court 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: September 14, 2009.

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Dispute Resolution Officer