



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for:

- A Monetary Order to recover rental arrears, damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- An order to retain the security deposit in partial satisfaction of the monetary claims.
- Recovery of the filing fee associated with this application in the amount of \$50

The tenant vacated the rental unit, therefore this decision only deals with matters pertaining to a monetary claim.

Both, tenant and landlord fully participated in the conference call hearing and each were provided opportunity to make submissions and provide testimony under solemn affirmation.

During the hearing, the landlord determined to amend their claim - deducting RENTAL LOSS (1/2 month rent) for July1-15, 2009, in the amount of \$404.

Therefore, the landlord's residual claim on application is as follows:

Tear out old living room rug and replace - damaged	\$792.38
Drapes-damaged	\$150.00
Repair holes in drywall	\$147.00
Refrigerator had to be replaced - damaged	\$325
Repair of kitchen cabinet drawer	\$40.00

Clean bedroom rugs	\$55.00
General cleaning	\$195.00
Pressure wash carport – car oil stain	\$50.00
Cut lawn	\$15.00
1 heat register	\$5.14
<b>Total of landlord's claim <i>on application</i></b>	<b>\$1774.52</b>

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The following is undisputed. The tenancy began on July 01, 2003 and ended July 02, 2009. Rent in the amount of \$808 was payable in advance on the first day of each month. At the outset of the tenancy there was no start of tenancy inspection. The landlord collected a security deposit from the tenant in the amount of \$375. At the end of the six (6) year tenancy an end of tenancy inspection was not conducted and some deficiencies of damage and in cleanliness were noted by the parties.

The tenant only has a dispute in respect to the landlord's claim for a replacement refrigerator in the amount of \$325, but is in agreement with all other portions of the landlord's claim. The tenant claims the refrigerator was damaged from the start of the tenancy, and "on its last legs". The landlord testified the refrigerator was at least 12 years old by the end of the tenancy.

After some required remediation of the rental unit it was again rented out July 15, 2009.

The landlord submitted document and oral evidence in support of the monetary claims.

### **Analysis**

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing.

I must emphasize that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party 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 reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement (less depreciation). In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

On the balance of probabilities and on the preponderance of all the evidence before me, I find the landlord has sufficiently met the test for their claim of damages and loss in respect to most portions of their claim.

In the absence of a start of tenancy inspection I find the landlord has not met the test for a claim in respect to the replacement of the refrigerator. I prefer the tenant's testimony that the refrigerator, although it may have been left unclean, was sufficiently damaged – causing it's replacement. As a result, **I dismiss** this portion of the landlord's claim without leave to reapply.

In respect to the replacement of the living room rug and drapes in the total claim of \$942.38, I find the landlord has neglected to factor depreciation and normal wear and tear into the required mitigation of their claim. I find both items to have a useful life of

12 years. The tenancy was for 6 years. Therefore, **I find** the landlord is entitled to 50% of their claim in the total of **\$396.19** and **\$75** respectively.

**I find** the landlord has sufficiently met the test for all other claims for damage and loss and is entitled to their recovery.

**I also find** the landlord's application has merit, and the landlord is therefore entitled to recovery of the filing fee from the tenants for the cost of this application in the amount of **\$50**.

**I order** that the landlord retain the deposit and accrued interest in the amount of **\$388.29** in partial satisfaction of the landlord's entitlement claim.

As for the Monetary Order, I find that the landlord has established an entitlement as follows:

Tear out old living room rug and replace - damaged	\$396.19
Drapes-damaged	\$75.00
Repair holes in drywall	\$147.00
Refrigerator had to be replaced - damaged	\$ .00
Repair of kitchen cabinet drawer	\$40.00
Clean bedroom rugs	\$55.00
General cleaning	\$195.00
Pressure wash carport – car oil stain	\$50.00
Cut lawn	\$15.00
1 heat register	\$5.14
<i>Retention of Security deposit and interest by landlord</i>	-\$388.29
<b>Total of landlord's claim on application</b>	<b>\$590.04</b>

**Conclusion**

I grant the landlord an order under Section 67 of the Residential Tenancy Act for the amount of **\$590.04**

If necessary, this order may be filed in the Small Claims Court and enforced as an order

Dated November 05, 2009.