



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNR</u>	Unpaid Rent or Utilities
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for unpaid rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. The landlord appeared and gave testimony. The tenant did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for a loss of rent for the month of August 2009 and compensation cleaning and repairs.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears owed, damages or loss of rent. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amount of rent being claimed is owed by the tenant to this landlord?
 - Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

Background and Evidence

The landlord testified that the 6-month fixed term tenancy began on March 1, 2009 and was to expire on August 31, 2009. The landlord submitted into evidence a copy of a tenancy agreement signed on February 9, 2009 showing the rent as \$1,500.00 per month. The agreement appeared to indicate that the security deposit paid was \$1,500.00 originally typed in the space but this amount had been manually altered and the amount was not clear. However, the landlord testified that the tenant actually paid a security deposit of \$750.00. The landlord testified that a move-in inspection report form was given to the tenant but was not returned.

The landlord testified that the tenant ended the tenancy in July 2009 and failed to pay rent for the month of August 2009. The landlord testified that the tenant had not fulfilled the tenant's responsibilities under the Act. The landlord is claiming loss of rent for the month of August in the amount of \$1,500.00. In regards to the landlord's efforts to re-rent, the landlord testified that she was able to re-rent the unit for one week in August.

The landlord submitted into evidence several pages with copies of emails between the parties and the purported date for each email was typed in bold font at the top.

The landlord testified that the unit was clean when the tenant moved in and was left in dirty condition when the tenant vacated costing \$250.00 for five hours of cleaning and submitted a copy of a cheque dated July 31, 2009 from the landlord to an individual for this amount. The landlord submitted a letter from the new tenant dated August 2009, indicating that the tenant had to "*spend a considerable amount of time cleaning*."

The landlord testified that costs had been incurred to replace the chain lock in the amount of \$52.82 and the landlord submitted an invoice for this amount. Also being claimed is \$570.00 to replace a broken microwave and \$350.00 to replace a broken DVD player. The landlord's evidence included a written statement from the new tenant who apparently moved into the unit in August stating that the microwave was not functioning and that the DVD player was broken.

The total amount of the claim by the landlord was \$3,420.00 plus the filing fee of \$50.00.

Analysis

The landlord is claiming damages including \$1,500.00 loss of rent and \$1,920 for cleaning and damages.

It is important to note that in a 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

Loss of Rent

I find that the tenant's early ending of the fixed term was in violation of the agreement. On the question of whether or not the landlord incurred a loss of \$1,500.00 due to the tenant's violation of the agreement, I find that the submitted evidence verified that a tenant had moved into the unit in August 2009. The landlord's verbal testimony that the unit was only rented for one week in August, was not supported by any further evidence to verify the occupancy date, such as a copy of the new tenancy agreement or a copy of

the payment receipt from the new occupant confirming the new tenancy. Accordingly I find that the landlord's claim for \$1,500.00 loss of rent for August 2009 must be dismissed due to insufficient proof.

In regards to the claim for cleaning costs in the amount of \$250.00, I find that the claim failed to meet element 1 of the test for damages. I find that the written statement from the new tenant dated August 2009, confirmed that the unit was cleaned by the new tenant and the copy of the cheque dated July 31, 2009 in payment for cleaning at a cost of \$50.00 per hour is not consistent with the other documentary evidence. Accordingly, I find that this portion of the landlord's claim must be dismissed.

In regards to the lock replacement, the furnishing of new locks is a landlord's responsibility under the Act and I therefore dismiss the portion of the landlord's application relating to the replacement lock.

In regards to the landlord claim for damages to the microwave and DVD, I find that no Move-In Condition Inspection Report was submitted. I find that there was insufficient evidence confirming the state of the rental unit and its contents at the time the tenancy began and therefore these claims do not satisfy element 2 of the test for damages and must be dismissed.

In regards to the landlord's verbal testimony that the tenant had paid \$750.00 security deposit, I find that the original amount shown on the tenancy agreement was \$1,500.00 and that this figure had been manually altered to obscure the amount. I find that there were no initials or any signatures of the parties on the document to indicate that this change occurred by agreement. I also note that the landlord did not provide a tenant payment ledger with details on the tenant's rental account which would verify what was paid and when, nor did the landlord provide bank records or copies of the cancelled cheques recording payments. I therefore find that the landlord's claim that the deposit paid was \$750.00 and not \$1,500.00 as originally recorded, was not sufficiently supported by evidence. Accordingly, I find that the security deposit being held in trust on behalf of the tenant to be \$1,500.00.

Based on the testimony and evidence presented during these proceedings, I find that the landlord's monetary claim has no merit due to insufficient evidentiary proof and must be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply.

I further find that the landlord is not entitled to retain the tenant's \$1,500.00 deposit which is held in trust on behalf of the tenant. The landlord is required is required to return the deposit to the tenant in compliance with section 38 of the Act.

November 2009

Date of Decision

Dispute Resolution Officer