

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, for damage to the unit, to keep the security deposit, 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 sent via registered mail on July 24, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant was deemed to be served the hearing documents on July 29, 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 under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy began on June 1, 2009 and was set to expire on May 31, 2010. Rent was payable on the first of each month in the amount of \$425.00 and the Tenant paid a security deposit in the amount of \$425.00 on April 9, 2009. The tenancy ended on June 29, 2009 when the Tenants vacated the rental unit.

The Landlord conducted a move-in inspection report on June 1, 2009 and a move out inspection report on June 29, 2009 and both reports were signed by the Tenant. The Landlord referred to her documentary evidence to support that the Tenants did not clean the rental unit prior to ending the tenancy.

The Landlord is seeking a \$200.00 penalty for breaking the lease early, \$85.00 for carpet cleaning, \$105.00 for suite cleaning, and \$850.00 for loss of July 2009 rent. The Landlord confirmed that receipts for the work performed were not submitted into evidence.

The Landlord testified that she was able to re-rent the unit effective August 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.

With respect to the Landlord's claim of a \$200.00 penalty, there is no provision in the *Residential Tenancy Act* (Act) which allows a landlord to charge a penalty to a tenant. Based on the aforementioned, I find that the Landlord has failed to prove the test for damage or loss as listed above, and I hereby dismiss the Landlord's claim, without leave to reapply.

The Landlord has claimed \$85.00 for carpet cleaning and \$105.00 for suite cleaning. The Landlord confirmed in her testimony that she did not submit evidence to prove when this work was performed, or how much was paid to have this work completed. I find that the Landlord has failed to prove all four requirements of the test for damage and loss as listed above and I hereby dismiss the Landlord's claim, without leave to reapply.

The Landlord is seeking \$850.00 for loss of July 2009 rent, as they were able to re-rent the unit as of August 1, 2009. I find that the Tenant has contravened section 45 of the *Act* which provides that a Tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The Landlord submitted evidence to support her claim that rent was payable in the amount of \$850.00. Based on the aforementioned, I hereby find in favor of the Landlord's claim of \$850.00 for loss of rent.

**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:

Loss of rent for July 2009	\$850.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$900.00</b>
Less Security Deposit of \$425.00 plus interest of \$0.00 from April 9, 2009 to November 12, 2009	- 425.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$475.00</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 \$475.00. The order must be served on the respondent and is enforceable through the Provincial Court and enforced 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: November 12, 2009.

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Dispute Resolution Officer