

DECISION

Dispute Codes MND MNR MNSD MNDC FF
 MNDC RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed to obtain a Monetary Order for damage to the unit, for unpaid rent or utilities, 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.

The Tenant filed to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, and an Order to allow the Tenant reduced rent for repairs, services, or facilities agreed upon but not provided.

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 October 9, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant was deemed to be served the hearing documents on October 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 27, 2009. The Landlord confirmed receipt of the hearing documents. The landlord was deemed to be served the hearing documents on October 2, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, the Tenant, and the Tenant's witness 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.

Preliminary Issue:

The Landlord testified that she provided a copy of her evidence to the *Residential Tenancy Branch* on the same day she provided copies of the Canada Post receipts.

There is no additional evidence on file, supplied by the Landlord, nor is there additional evidence uploaded into the electronic evidence file. Based on the aforementioned, I will proceed with my decision based on the evidence currently held on the files and the verbal testimony.

Issues(s) to be Decided

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

Is the Tenant entitled to Orders under sections 65 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts provided in the testimony are: the Tenant entered into a fixed term tenancy, with the previous landlord, on March 1, 2008 which was set to expire on February 28, 2009 and paid a security deposit of \$425.00 on February 15, 2008. The Tenant entered into a second fixed term tenancy, with the new owners, on March 1, 2009 which was set to expire on February 28, 2010. Rent was payable on the first of each month in the amount of \$925.00. The previous landlord completed a move-in inspection report and the existing Landlord completed a move-out inspection report, in

the presence of the Tenant, however the Tenant refused to sign the move-out inspection report.

Landlord's Application

The Landlord is seeking a monetary claim of \$250.00 for cleaning costs and damages, as the Tenant failed to clean the rental unit before moving out. The Landlord testified that she did not submit a copy of the cleaning receipt and she could not say for certain which date the cleaning was done.

The Landlord testified that she approached the Tenant on September 17, 2009 to work out a mutual agreement to end the Tenancy. The Landlord argued that she had received several complaints against the Tenant and that she informed the Tenant that it was best that they end the fixed term tenancy as this was not the place for the Tenant to live. The Landlord argued that the Tenant signed the mutual agreement to end the tenancy effective October 31, 2009 however one week later, on September 25, 2009, the Tenant provided the Landlord with written notice that she will be moving on September 30, 2009.

The Landlord argued that she was not able to re-rent the unit on such short notice, that the unit is still vacant, and that after cleaning and renovating the unit it was ready for occupancy by mid October 2009. The Landlord is seeking \$925.00 for loss of rent for September 2009.

The Tenant argued that she was forced to sign the mutual agreement to end tenancy under duress. The Tenant claims that the Landlord came to her rental unit and asked to be let in to discuss the issue of her living there. The Tenant testified that she let the Landlord into the rental unit, listened to the Landlord explain the form, all the while her two young children were crying the background. The Tenant claimed she signed the form just to get on with her evening.

Tenant's Application

The Tenant withdrew her request for an order to allow the Tenant reduced rent, as the tenancy ended when the Tenant vacated the unit on September 29, 2009.

The Tenant is seeking \$2,125.00 as compensation for damage or loss under the Act. The Tenant testified that her claim amounts to approximately one half of five months rent for the period between May 2009 and September 2009 which is the period that the Tenant had to live in an apartment that had a sinking toilet and a hole in the ceiling above the toilet.

The Tenant argued that on November 12, 2008 the new owners of the building verbally informed the Tenant that they would be repairing all issues listed on outstanding work orders. The Tenant testified that she had submitted work orders prior to November 12, 2008 which listed the sinking toilet and hole in the ceiling.

The Tenant confirmed that she did not put in additional requests to have these two items repaired as she said there were too many different property managers. The Tenant also confirmed that the toilet and shower were fully operational during this period; however the toilet would get plugged up once in a while.

The Landlord argued that there were no outstanding work order issues for this rental unit. The Landlord read out two affidavits, one from the previous resident manager and one from the building owner, and both affidavits state that there were no outstanding work orders for the Tenant's rental unit.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant 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 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 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

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.

Landlord's Application

With respect to the Landlord's claim of \$250.00 for damage and cleaning costs the Landlord testified that she did not submit receipts into evidence, in support of her claim, and the Landlord could not provide testimony about the actual date that the work was completed. 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 evidence before me supports the testimony that the Tenant signed a mutual agreement to end a fixed term tenancy on October 31, 2009 and eight days later provided the Landlord with five days written notice that she was ending the tenancy earlier than the agreed date. I find that the Tenant has contravened sections 44 and 45 of the *Act* as she ended the tenancy prior to the agreed upon date, in the mutual agreement to end tenancy, and prior to the end of the fixed term tenancy. Based on the

above I find that the Landlord has proven the test for damage or loss listed above and I hereby approve the Landlord's claim for loss of October 2009 rent in the amount of \$925.00.

As the Landlord has been partially successful in their claim, I find that the Landlord is entitled to recover the \$50.00 filing fee from the Tenant.

Tenant's Application

The Tenant is seeking compensation of one half of five months rent between May 2009 and September 2009. The Tenant provided testimony that the new owners made a verbal agreement with the Tenant in November 2008 to repair any outstanding work order items.

The Tenant did not provide documentary evidence to support that she had submitted work order or repair requests prior to November 2008 for the problems with the toilet sinking and the hole in the ceiling. The Landlord provided testimony where she read affidavits which stated that there were no outstanding work orders for the Tenant's rental unit. The Tenant confirmed that she did not submit any repair or work order requests since November 2008 and I note that the Tenant had requested compensation for only a five month period (between May and September 2009) and claimed nothing for the period prior to November 2008 to May 2009.

Based on the evidence and testimony before me I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss the Tenant's application, without leave to reapply.

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 October 2009	\$925.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$975.00
Less Security Deposit of \$425.00 plus interest of \$5.59 from February 15, 2008 to November 13, 2009	-430.59
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$544.41

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 \$544.41. The order must be served on the respondent Tenant and is enforceable through the Provincial Court and enforced as an order of that Court.

I HEREBY DISMISS the Tenant'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: November 12, 2009.

Dispute Resolution Officer