

DECISION

Dispute Codes:

MNR, MNSD, MND, FF

Introduction

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

- A Monetary Order to recover rental arrears and damage to the rental unit
- 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 \$100

Both, the landlord and the tenant appeared in the hearing and each provided affirmed testimony and were given opportunity to fully participate in the proceedings, including making prior submissions and ask questions.

The landlord amended their claim on application during the hearing to reflect the following:

Cleaning service.	\$240.00
Replacement of damaged baseboards	\$262.50
Invoice for unpaid water bill	\$118.43
Replacement of light bulbs	\$12.85
Carpet cleaning	\$141.75
Repair to wood floors	\$1285.00
Repair and repainting of walls - total	\$340.76
Landlord's labour at. \$20/hr	\$400.00
Repair to oven liner	\$356.59

Late rent fees (\$25 x 2)	\$50.00
Loss of rental revenue for August 2009	\$1550.00
Filing fee for this application	\$100.00
Total of landlord's claim <i>on application</i>	\$4857.88

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 August 01, 2008 and ended July 31, 2009. Rent for the rental house was in the amount of \$1700 - payable in advance on the first day of each month, plus the cost of utilities. At the outset of the tenancy the landlord and tenant conducted start of tenancy inspection. The landlord collected a security deposit from the tenant in the amount of \$850. Circumstances at the end of the tenancy prevented an end of tenancy inspection being conducted by both parties. However, the landlord made and recorded an inspection and forwarded same to the tenant.

The testimony of the landlord is that after the tenant vacated, the landlord's inspection determined that the rental unit required cleaning and some repair to bring it to the condition it was in at the start of the tenancy. This includes repair and painting to a wall, replacement of some baseboards due to pet damage, replacement and remediation of some alder floor boards, repair to the range oven, and replacement of some light bulbs. The landlord further determined that a utility bill for water was unpaid, and further determined to claim for late rent fees totalling \$50. The landlord submitted document, video and oral evidence in support of the monetary claims, as well as a quantum of receipts and invoices for the work and materials involved.

The tenant testified that they agreed with the bulk of the landlord's claims, except for the claim for remediation of the wood floors, for which the tenant considered the purported "damage" to be normal wear and tear. The landlord mitigated their claim in this portion of the application to account for wear and tear by deducting \$500.

The landlord claims that, despite advertising the rental unit for a period of almost three (3) months prior to the tenant vacating the rental unit they were not able to rent it out until October 2009, and therefore, the landlord is claiming loss of revenue for August 2009 in the stated amount of \$1550. The landlord claims that the tenant did not make it "easy" to show the rental unit prior to them vacating. It is the landlord's testimony that the tenants did not keep the rental unit sufficiently clean in the latter portion of the tenancy to make it appealing to prospective tenants.

Analysis

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

On the preponderance of all the evidence advanced, and on the balance of probabilities I am satisfied the landlord is entitled to late fees in the amount of **\$50**, the amount of the final water bill of **\$118.43**, and carpet cleaning in the amount of **\$141.75**, as all these items are in the tenancy agreement, and for which the tenant is lawfully obligated under the tenancy agreement.

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.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify *the actual monetary amount of the loss or damage*. Finally, the claimant must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

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 the amount of **\$2897.70**

In respect to the landlord's claim for loss of revenue for the month of August, 2009, I am not satisfied with the landlord's explanation that the tenant's failure to comply with the Residential Tenancy Act (the *Act*) was responsible for the landlord's inability to re-rent the residential property for August 01, 2009. Section 7 of the *Act* states as follows:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, there does not appear to be a question that the landlord made reasonable efforts to minimize their losses, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established

in Section 7(1) in that they did not prove on a balance of probabilities that their loss resulted from the tenant's failure to comply with the Act. I find that their loss of revenue resulted from a lack of tenants interested in the rental property. On this basis I will not allow the landlord's claim for one month's loss of revenue. However, when a claim is made by the landlord for damage to property, the normal measure of damage is not only the cost of repairs, but some allowance for loss of rent or loss of occupation during the repairs or replacement, may be reasonable. In this regard, I find it reasonable to grant the landlord one half month's rent in the amount of **\$850** in loss of revenue.

I find that as the landlord's application has merit, the landlord is therefore entitled to recovery of the filing fee from the tenants for the cost of this application in the amount of **\$100**.

I order that the landlord retain the deposit and accrued interest of **\$855.33** 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:

Cleaning service.	\$240.00
Replacement of damaged baseboards	\$262.50
Invoice for unpaid water bill	\$118.43
Replacement of light bulbs	\$12.85
Carpet cleaning	\$141.75
Repair to wood floors	\$1285.00
Repair and repainting of walls - total	\$340.76
Landlord's labour at. \$20/hr	\$400.00
Repair to oven liner	\$356.59
Late rent fees (\$25 x 2)	\$50.00

<i>Landlord's retention of security deposit</i>	- \$855.33
Filing fee for this application	\$100.00
Total of landlord's entitlement	\$3302.55

Conclusion

I grant the landlord an order under Section 67 of the Residential Tenancy Act for the amount of **\$3302.55**

If necessary, this order may be filed in the Small Claims 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: December 11, 2009
