

## **DECISION**

Dispute Codes      MND FF

### Preliminary Issues

The Landlord advised that they wished to withdraw their application against the male Tenant, (Tenant 2), as they have determined after filing their application that they did not confirm if the male Tenant's address was the same as the female Tenant's.

The Landlord argued that their collections agent contacted the female Tenant via telephone and the female Tenant provided him with her mailing address however the collections agent did not verify if that was also the male Tenant's address.

Based on the Landlord's request to withdraw their claim against the male Tenant, the hearing proceeded with the Landlord's claim against the female Tenant, (Tenant 1).

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the rental unit 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 done in accordance with section 89 of the *Act*, sent via registered mail on September 17, 2009. Copies of the mail receipts were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on September 22, 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 their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

## Background and Evidence

The month to month tenancy began on February 1, 2007 and ended on September 30, 2007 after the Tenants provided the Landlord with written notice to end the Tenancy. The Landlord filed for dispute resolution on September 16, 2009 which is within the time frame set out in section 60 of the Act. Rent was payable on the first of each month in the amount of \$313.00 and the Landlord did not collect a security deposit.

The Landlord submitted into evidence copies of e-mails confirming that the collection agent contacted the female Tenant, copies of invoices for costs incurred to repair and clean the rental unit, a move-in inspection report signed by the Tenant on January 26, 2007, and a move-out inspection report completed in the absence of the Tenant on October 4, 2007, a copy of the notice of final opportunity to attend move-out inspection, a copy of a letter dated September 7, 2007 advising the Tenants of two opportunities to attend the move-out inspection, a copy of the tenancy agreement, and photographic evidence to prove the condition of the rental unit at the end of the tenancy.

The Landlord is seeking a monetary claim for the following:

**Repair of broken underground sprinklers - \$138.69** – The Landlord argued that the Tenants were responsible for driving over the lawn breaking the sprinkler heads. The sprinklers were located in an open area of the complex accessible by the general public. The Landlord stated that she did not submit evidence to prove that it was the Tenants who did this.

**Cleaning Costs - \$300.00** – The Landlord referred to her documentary evidence to support that it took over nineteen hours to clean the rental unit after the Tenants vacated it. The Landlord argued that they had to pay their staff member to clean the unit at \$19.00 per hour plus benefits so the Landlord is seeking 15 hours @ \$20.00 per hour.

**Install new bi-fold door and repair kitchen cabinet - \$30.00** – The Landlord referred to her evidence to support that the Tenants caused the damage and they had to hire someone to complete the installation of the new bi-fold door and repair the kitchen cabinet. The Landlord could not provide an age for the rental unit however she stated that her records indicate that the bi-fold door was purchased in October 2005.

**Purchase of replacement bi-fold door - \$75.99** – The Landlord provided testimony that the existing bi-fold door was new in October 2005 and in good condition at the onset of the tenancy. The Landlord argued that the bi-fold door was broken beyond repair at the end of the Tenancy.

**Removal of garbage and larger items to the Landfill** - \$304.33 – The Landlord provided testimony along with her photo evidence to support that there was a substantial amount of waste left behind by the Tenants.

**Linoleum Repair** - \$159.00 – The Landlord testified that the linoleum was installed in December 2006 and was in good condition at the onset of the tenancy. The Landlord argued that the Tenants caused tears in the linoleum which the Landlord was able to have repaired instead of replaced.

**Repair basement walls and remove paint from floor** - \$212.00 – The Landlord is claiming the costs to repair an area in the basement where the Tenants spray painted the lines of a hockey rink and then proceeded to play hockey allowing the puck to hit the surrounding walls causing extensive damage. The Landlord referred to her evidence in support of this claim.

**Replace broken toilet seat** - \$11.71 – The Landlord is seeking reimbursement for the cost to replace the broken toilet seat as supported by the Landlord's photos. The Landlord could not provide testimony as to the age of the toilet seat.

### Analysis

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

**Repair of broken underground sprinklers** - \$138.69 – Based on the evidence before me I find that the Landlord has failed to provide evidence to prove the test for damages as listed above and I hereby dismiss their claim of \$138.69 without leave to reapply.

After a close review of the remainder of the Landlord's claim and evidence before me I find the Landlord has proven the test for damage or loss as listed above and I hereby approve their monetary claim as explained and itemized below.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

**Cleaning Costs** - \$300.00 – I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for \$300.00 of cleaning costs.

**Install new bi-fold door and repair kitchen cabinet** - \$30.00 – The Landlord has proven that they incurred the costs claimed in regards to the Tenant's breach and I hereby approve their claim.

**Purchase of replacement bi-fold door** - \$75.99 – The Landlord provided testimony that the existing bi-fold door was new in October 2005 and in good condition at the onset of the tenancy. The Residential Tenancy Policy Guideline (RTPG) provides the useful life of a door to be 20 years. Based on the aforementioned I find that the Landlord has proven the test for damage or loss and I award them \$68.39 ( $\$75.00 \times 18/20$ )

**Removal of garbage and larger items to the Landfill** - \$304.33 – The Landlord has proven that they suffered the costs to remove the Tenant's garbage and return the rental unit to the state it was at the on-set of the tenancy. I hereby award the Landlord costs of \$304.33.

**Linoleum Repair** - \$159.00 – The Landlord testified that the linoleum was installed in December 2006 and was in good condition at the onset of the tenancy. The RTPG provides the useful life of flooring to be ten years. When considering this claim I noted that the Landlord mitigated their loss and had the flooring repaired instead of replaced and on that basis I find the Landlord has proven the test for damage or loss as listed above and I award the Landlord the full repair costs of \$159.00.

**Repair basement walls and remove paint from floor** - \$212.00 – The Landlord is claiming the costs to repair an area in the basement where the Tenants spray painted

the lines of a hockey rink and then proceeded to play hockey allowing the puck to hit the surrounding walls causing extensive damage. The evidence supports that the Tenants wilfully and intentionally caused this damage and I find the Landlord has proven the test for damage and loss as listed above. Based on the aforementioned I hereby award the Landlord \$212.00 as claimed.

**Replace broken toilet seat - \$11.71** – There is no evidence before me to support the age of the rental unit or the actual age of the toilet seat. Based on the aforementioned I find the Landlord has failed to substantiate the amount claimed and I hereby dismiss the Landlord's claim of \$11.71, without leave to reapply.

As the Landlord has been primarily successful with their application I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the landlord is entitled to a monetary claim as follows:

Cleaning costs	\$300.00
Labor to Install new bi-fold door and repair kitchen cupboard	30.00
New bi-fold door	68.39
Garbage removal costs	304.33
Linoleum repair	159.00
Repair of basement walls and flooring	212.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,123.72</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 **\$1,123.72**. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court 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: January 15, 2010.

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Dispute Resolution Officer