

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the rental building, to retain the security deposit plus interest, and to recover the cost of the filing fee from the Tenant for this application.

Service of the original hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 29, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony which also provided that the Tenant signed for the registered mail package on October 1, 2009. The Tenant is deemed to be served the original hearing documents on October 4, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The remaining evidence and a copy of the amended application for dispute resolution were sent to the Tenant via regular mail on December 8, 2009 and January 8, 2010. The amended application for dispute resolution changes the amount claimed from \$13,560.83 to \$14,060.83. As the amended application was not served to the Tenant in accordance with the *Act* I will only proceed based on the original application for dispute resolution.

The Landlord and the Resident Manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not appear despite being served with notice of this hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Has the Landlord proven entitlement to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began on September 1, 2008 and ended on September 22, 2009. The portion of rent payable by the Tenant was \$334.00 with a market value

of the rent at \$645.00. The Tenant paid a security deposit of \$250.00 on September 29, 2008. A move-in inspection report was completed on September 01, 2008 and signed by both parties. The move-out inspection report was completed on September 26, 2009 in the absence of the Tenant.

The Landlord testified and confirmed that the Tenant was served with an Order of Possession that was granted during a dispute resolution hearing which was held on September 8, 2009. The Landlord advised that they were informed that the Tenant had vacated the rental unit on September 22, 2009 when a friend of the Tenant's turned the Tenant's rental unit keys into the Resident Manager.

The Landlord testified that the rental building is approximately 30 years old and consists of commercial rental units on the main entry level, residential rental units in the upper floors, and below grade in the basement are a common hallway, stairway, pool table recreation room, and laundry room.

The Landlord submitted a substantial amount of documentary evidence, such as Tenant work requests, Landlord work orders, voice message transcripts, breach letters issued to the Tenant, RCMP reports, and invoices for repair work performed, in support of the Landlord's claim that the Tenant intentionally caused damage to the rental unit. The damage caused by the Tenant includes the Tenant cutting out a piece of the carpet and underlay which the Tenant through away; the Tenant purposely caused water damage inside the rental unit; and the Tenant intentionally caused damage to the taps, caulking, tile and grout around the bathtub and shower. The Landlord referred to his evidence which supports that these occurrences began sometime around February 20, 2009 and escalated between June 30, 2009 and August 27, 2009.

The Landlord referred to his picture evidence and written submissions, received from the RCMP and submitted as evidence by the Landlord, in support of his claim that the Tenant returned and entered the building carrying a water hose, during the evening of August 27, 2009. The Tenant entered into the rental unit with the water hose, which the Tenant turned on and left running, intentionally flooding the main floor of the rental unit and subsequently flooding the basement floor which is located below grade.

The Landlord confirmed that all residential tenants and commercial tenants are required to have their own insurance policies. The Landlord argued that there were two commercial tenants who suffered damages as a result of the Tenant's actions. The Landlord advised that one of the commercial tenants had insurance coverage and the other commercial tenant did not. The company that had insurance was required to pay a \$500.00 insurance deductible, for which the Landlord has reimbursed and is claiming in this application. The commercial tenant that did not have insurance will be paying for their losses which resulted from this incident.

The Landlord's claims are broken down into two sections, one for damages caused to the Tenant's rental unit and the second for damages caused to main floor and below grade areas.

### **Main Floor and Below Grade Damages Caused by the Tenant August 27, 2009**

The Landlord submitted evidence and proof of repairs as follows:

August 28, 2009 Carpet company to provide initial clean up of water \$2100.00  
August 28, 2009 Wages for Resident Manager for initial water clean up \$150.00  
August 28, 2009 Wages for Janitor for initial water clean up \$90.00  
January 8, 2010 Payment to commercial tenant for insurance deductible of \$500.00

A quote was provided for painting and repairs to common area walls and ceiling in the amount of \$1,800.00 plus GST. The Landlord confirmed that this work has not been completed.

### **Repairs Required to the Tenant's Rental Unit During the Tenancy**

The Landlord submitted evidence and proof of repairs as follows:

August 24, 2009 Labour to cut access hole to inspect plumbing to rental unit \$204.75  
September 14, 2009 Labour to mud, tape, paint access hole to rental unit \$100.00  
September 15, 2009 Labour to remove and reinstall Carpet and Underlay \$435.75  
September 15, 2009 purchase of Carpet and Underlay for rental unit \$1,125.72  
September 29, 2009 Labour and supplies to repair water pipes and taps \$770.18  
October 25, 2009 Invoice to remove existing tiles, hand rail and soap dish, replace drywall around tub and install a tub surround after pipe and tap repairs \$1,042.65

The Landlord argued that the existing tiles and drywall around the tub had to be removed to repair the damage to the water pipes which was intentionally caused by the Tenant. The Landlord testified that the plumbers advised him that the Tenant would have had to use excessive force to damage the taps and interior water pipes in the manner that he did. The Landlord stated that the tiles surrounding the tub were of an age and style that they could not be replaced so he chose to replace the tiles with a less expensive tub surround.

### **Analysis**

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence and testimony.

In reviewing the evidence the Landlord argued that the move-out inspection report and invoices in support of the quotes for work performed were submitted in separate packages. There was not a third package of evidence provided in my file and given that the missing documentation was confirming amounts previously submitted, I allowed the Landlord to fax copies of the invoices and a copy of the move-out inspection report to the Residential Tenancy Branch after the hearing, in accordance with section 11.5 of the Residential Tenancy Branch Rules of Procedure. I will attach copies of these additional documents to my written decision for both the Tenant and the Landlord in order to ensure the principles of natural justice are upheld.

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

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.

Upon further review of the evidence before me I find that the Tenant has failed to comply with section 32(3) of the Act which provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned I hereby award the Landlord a monetary claim as follows:

- a) Restoration of Flood on August 28, 2009: Clean up of water caused by the Tenant, for a total of \$2,340.00 (\$2100.00 +\$150.00 +\$90.00); and

- b) Reimbursement of commercial tenant's insurance deductible of \$500.00 for repairs of water damage created by the Tenant; and
- c) Cost to investigate the Tenant's false claims of water leaking by cutting an access hole into the wall outside of the Tenant's bathroom \$204.75; and
- d) Labour to mud, tape, and paint the access hole to rental unit created in response to the Tenant's false claims of water leaks \$100.00; and
- e) The Landlord has claimed costs to remove and replace the carpet and underlay claiming that the carpet was newly installed and estimated that it was new from August 2008. The Landlord was not able to provide evidence in support of the age of the carpet and there is no reference made on the move-in inspection report that the carpet was new.

I note that the paint is referenced as FR Paint – meaning fresh paint on the move-in inspection report. On a balance of probabilities I find that if the carpet was brand new, as claimed by the Landlord, a reference would have been made on the move-in inspection report just as the “FR paint” reference was made. I also note that if the carpet was only one year old the Landlord may have been able to find a piece of the carpet in order to have the carpet patched instead of replaced. I cannot determine the actual age of the carpet, given the picture evidence, however based on the pictures the carpet does appear to be of an industrial grade, a grade that would be more durable and potentially last longer than the normal useful life of a regular grade carpet.

Based on the above, and in the absence of proof of the actual age of the carpet, I hereby award the Landlord the full cost of the labour to remove and install the carpet in the amount of \$435.75 plus 15% of the full cost to purchase the carpet and underlay in the amount of \$168.86 for a total amount of \$604.61; and

- f) The invoice for the labour and material costs to repair and replace water pipes and taps in the rental suite bathroom, which were intentionally damaged by the Tenant, does not separate the labour costs from the material costs. I have based my awarded amount on material costs \$133.50 and labour of \$600.00 (\$733.50). As the taps appear to be the original taps, 30 years old, I find that they have outlasted their useful life span of 15 years therefore I decline to award the costs to replace the taps. I also decline to award the Landlord the labour costs to install the taps and hereby approve labour and service costs for repairing the pipes in the amount of \$535.00.
- g) The Landlord has claimed \$1,042.65 to remove and replace the tub surround tile, the drywall, and to replace with new drywall and a tub surround. The Landlord

argued that the removal was necessary to access the damaged water pipes in the wall which housed the taps. The useful life of tubs and surrounding tiles is 20 years and the tiles surrounding the tub in this case were approximately 30 years old. I note that the entire tile surround and walls did not need to be removed to complete the repairs of the water pipes, which ran through only one of the three walls surrounding the tub. Based on the aforementioned I hereby award the Landlord labour costs in relation to the removal and replacement of the wall which housed the water taps in the amount of \$195.00 (3 hours at \$65.00 per hour)

The evidence supports that the Landlord has not completed the painting to the common area walls, ceilings, and basement painting, and therefore the Landlord has not yet suffered this loss. Based on the aforementioned I hereby dismiss the Landlord's claim for painting in the amount of \$1,800.00 with leave to reapply.

The Landlord has primarily been successful with their claim and I hereby award recovery of the \$100.00 filing fee.

**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 plus interest as follows:

Restoration of flood	\$2,340.00
Insurance deductible reimbursed to commercial tenant	500.00
Labour to investigate complaints of non-existent water leaks	204.75
Labour to repair access hole for investigation of false complaints	100.00
Carpet and underlay costs to remove and replace	604.61
Labour to repair water pipes in walls in rental unit	535.00
Remove and replace wall behind water taps above tub	195.00
Filing fee	100.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$4,579.36</b>
Less Security Deposit of \$250.00 plus interest of \$0.96 from September 29, 2008 to January 27, 2010	-250.96
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$4,328.40</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 **\$4,328.40**. 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 27, 2010.

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Dispute Resolution Officer