



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, 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, or damage to the rental unit site or property and for money owed or compensation for damage or loss under the Act. The landlord has also applied to keep all or part of the security deposit and to recover the cost of the filing fee.

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 28, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant refused to accept these but is deemed to be served the hearing documents on October 01, 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. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered

Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and damage to the rental unit?
- Is the landlord entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?

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- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on April 04, 2008 and ended on August 12, 2009. This was a month to month tenancy and the rent for this property was \$1,100.00 per month due on the 1st of each month. The tenant paid a security deposit of \$1,100.00 on April 04, 2008 and a pet damage deposit of \$250.00 on April 15, 2008. A move in and move out condition inspections were completed with the landlord and tenant.

The landlord testifies that the RCMP enforced a search warrant at the property looking for drugs or a possible grow-up. The tenant refused them entry and the RCMP proceeded to enter by force using their battering ram. The RCMP searched the house and did not find any evidence of drugs only a few dead marijuana plants. However, they did arrest the tenant on a firearms charge for an illegal weapon. Although there was no evidence of drugs or a grow-up present at the property the City's Bylaw enforcement officer posted the property under the City's controlled Substance Property Remediation Bylaw Number. This effectively evicted the tenant and meant the property could not be inhabited until remediation requirements were carried out.

The landlord testifies that she argued the case with the City Bylaw officers that no drugs were found on the premises. They agreed that if the walls were tested for cocaine and other drugs and no trace was found of it then they would reduce the remediation requirements to a "professional clean" only. This process took place. No drugs trace was found and a cleaning company was hired to clean the property. This took 37 hours at a cost of \$740.00. This work was delayed by three weeks until the tenant had removed his belongings. The landlord assisted the tenant in this process with his approval. The city again viewed the property and removed the Posting on September 09, 2009. The landlord testifies that she was unable to advertise the property for rent until this posting was lifted. The landlord also testifies that she found a substantial amount of damage to the property which had to be repaired before the unit could be re-rented. The landlord also found substantial damage to the stove and refrigerator which were

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replaced with second hand items. These repairs were made and the unit was re-rented on October 03, 2009.

The landlord is claiming a loss of rental income for September, 2009 of \$1,100.00; re-glazing two windows which had been broken by the tenant \$79.97, cost of replacing the front door damaged by the RCMP entry \$222.88; replacement of back door damaged by tenant \$357.28 and expanding foam insulation for exterior doors \$17.50; replacement of bedroom door \$84.00; replacement of bathroom door \$39.20; door shims, caulking and trims \$120.24; bolts for front stairs \$4.67; masks and gate latch \$16.77; window shades \$7.77; cleaning supplies \$50.33; cleaning services \$740.00; plywood, braces and skirting for stair repairs \$124.24; painting supplies \$162.96; shower head, toilet seat, café rod, ceiling fan \$121.14; expanding foam \$11.67; light bulb replacement \$5.78; replacement refrigerator \$80.00; caulking and screws \$20.74; replacement of gas stove \$180.00; replacement of shower bracket and hose \$19.02; trim \$13.43; carpentry repairs and purchase of lower cabinets in kitchen \$1,352.50. The landlord also incurred costs for film to photograph the damage to the property \$12.85; costs for the registered mail service \$8.90 and replacement keys as these were not returned by the tenant \$30.00. The landlord has amended her claim to include some additional costs for repairs which I have allowed.

The landlord has provided the move in and move out condition inspection reports, photographic evidence of the damage to the property and receipts for the repairs and replacement costs of the above items. The landlord has spent a considerable amount of time dealing with these issues and will not pursue costs for this at this time.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the landlord. The tenant had opportunity to attend this hearing to dispute any of the landlords' evidence but has chosen not to appear. Therefore, in the absence of any evidence from the tenant I have applied a test for damages to determine if the landlord is entitled to a Monetary Order.

TEST FOR DAMAGE AND LOSS CLAIMS

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support her claim and she has been able to meet all of the components of the above test. The landlord has provided a detailed move in and move out condition inspection report which clearly shows the condition of the rental property at the start and end of the tenancy. The remainder of the landlords' evidence both documentary and verbal also supports her claim that the damages were caused during the tenancy. Although there were no drugs found on the property and it was not the fault of the tenant that the City posted a Notice to prevent the landlord re-renting the property, I find the tenant did not remove his belongings for three weeks and left behind a substantial amount of repairs which did prevent the landlord from re-renting the property throughout September. Consequently I find the tenant is responsible for the loss of rental income for September, 2009.

As the landlord has been successful in this matter I order her to keep the tenants security deposit of \$1,100.00 and pet damage deposit of \$250.00 and accrued interest of \$14.93 in partial payment of these costs pursuant to s.38(4)(b).



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I find that the landlords' application is upheld and she is entitled to a Monetary Order for the following amount pursuant to s.67 of the Act:

Damages, cleaning and replacement costs	\$3,844.94
Registered mail costs for service	\$8.90
Replacement of keys	\$30.00
Filing fee	\$50.00
Subtotal	\$5,033.84
Less security and pet damage deposits	(-\$1,350.00)
Less accrued interest on deposits	(-\$14.93)
Total amount due to the landlord	\$3,668.91

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 **\$3,668.91**. The order must be served on the respondent 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 28, 2010.

Dispute Resolution Officer