

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, to keep the security deposit, 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 October 7, 2009. The Tenant confirmed receipt of the hearing package and Landlord's evidence.

Both the Landlord and Tenant appeared, gave affirmed testimony, were 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

Is the Landlord entitled to a Monetary Order under sections 38 and 67 for unpaid rent, damage or loss under the Act, and to keep the security deposit?

### Background and Evidence

The Landlord's undisputed testimony provided that the month to month tenancy began on September 1, 2009 and ended on September 30, 2009 when the Tenant vacated the rental unit without prior notice. The monthly rent of \$750.00 was payable on the first of each month and the Tenant paid a security deposit of \$375.00 and a \$50.00 deposit for the remote fob on September 1, 2009. A move-in inspection report was completed on September 1, 2009 and a move-out inspection report was completed on September 30, 2009. Both inspection reports were completed in the presence of the Tenant who signed in agreement of both reports.

The Landlord argued that the Tenant provided verbal notice on September 30, 2009 that he would be ending his tenancy on that day.

The Tenant argued that he sent an e-mail to the Landlord's corporate office on approximately September 13 or 14, 2009 to advise that he would be ending the tenancy two weeks later on September 30, 2009. The Tenant confirmed that he does not have evidence of the aforementioned e-mail.

The Landlord testified that they were not able to rent the unit until December 1, 2009 and they are seeking \$750.00 for loss of rent for October 2009 and \$55.00 for cleaning cost for which the Tenant agreed to on the move-out inspection report.

### 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

Based on the evidence and corroborating testimony I find that the Tenant failed to comply with section 45 of the Act which provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord received the notice, and is the day before the day in the month that rent is payable.

As per the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve the Landlord's claim for loss of rent for October 1, 2009 in the amount of \$750.00.

The Tenant has confirmed that he signed the move-out inspection report approving the \$55.00 in cleaning costs which supports that the Tenant failed to comply with section 37

of the Act and leave the rental unit reasonably clean and undamaged. Therefore I hereby award the Landlord their monetary claim in the amount of \$55.00.

As the Landlord has been successful with their application I hereby award them recovery of the \$50.00 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, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Loss of rent for October 2009	\$750.00
Cleaning costs	55.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$855.00</b>
Less Security Deposit of \$375.00 plus Remote Deposit of \$50.00 plus interest of \$0.00	-425.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$430.00</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 **\$430.00**. 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: February 03, 2010.

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Dispute Resolution Officer