

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, for unpaid rent or utilities, to keep the security deposit, for money owed or compensation for damage or loss under the Act, 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 15, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on October 20, 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. The Tenant did not appear despite being served notice of today's hearing in accordance with the Act.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to Monetary Orders for A) damage to the unit, B) unpaid rent, C) to keep the security deposit, D) for money owed or compensation for damage or loss under the Act, under sections 38 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy agreement began on March 1, 2009 and was set to expire on February 28, 2010 however the tenancy ended when on August 30, 2009, the Tenant

provided the Landlord with notice to end the tenancy effective September 30, 2009. Rent was payable on the first of each month in the amount of \$750.00 and a security deposit of \$375.00 was paid in two instalments with \$325.00 being paid on February 18, 2009 and \$50.00 on February 25, 2009.

The Landlord referred to the documentary evidence of the tenancy agreement, consent agreement, move-out inspection form, and moving expense request in support of their claim that the Tenant ended the fixed term tenancy prior to the expiry of the fixed term thus making the Tenant liable to have the \$300.00 liquidated damages and \$250.00 move-in allowance deducted from the Tenant's security deposit. The Landlord argued that they suffered advertising costs, additional labour costs, and administration fees to re-rent the unit as quickly as possible in order to prevent further losses.

The Landlord testified that they are also seeking \$58.85 for carpet cleaning charges and confirmed that they submitted the carpet cleaning invoice in the amount of \$57.75.

The Landlord confirmed that the rent was paid in full up to September 30, 2009, that the rental unit was occupied by new tenants on October 1, 2009, and no additional loss was being claimed.

### 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

After careful review of the evidence and testimony before me, I find that the Landlord has failed to prove their claims for damages to the unit or for unpaid rent as based on the Landlord's own testimony there was no "damage" to the unit and rent was paid in full up to September 30, 2009. Therefore I hereby dismiss the Landlord's application for damage to the unit and for unpaid rent.

The Landlord has provided evidence and testimony in support of their claim for money owed or compensation for damage or loss under the Act and Regulation. The Landlord has claimed \$58.85 for carpet cleaning, \$300.00 for liquidated damages, and \$250.00 to be deducted from the security deposit for the return of a move-in allowance.

The evidence supports that the Landlord was required to have the carpets cleaned and a copy of the invoice dated October 1, 2009 in the amount of \$57.75 was submitted in support of this claim. The evidence supports that the Tenant failed to clean the carpets in accordance with section 37 of the Act and the Residential Tenancy Policy Guidelines which provides that the Tenant is generally responsible for cleaning carpets at the end of a tenancy and to leave the rental unit reasonably clean and undamaged. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve their claim for carpet cleaning in the amount of \$57.75.

The documentary evidence supports that the Tenant attended the move-out inspection form and signed both the inspection form and an agreement with the Landlord however there is no indication on either form that the Tenant signed these forms agreeing to the noted deductions from her security deposit.

The Landlord claims for the \$250.00 move-in allowance to be deducted from the security deposit as provided by the moving expense request form which the Landlord required the Tenant to sign and which states "THE TENANT AGREES THAT IF HE/SHE VACATES THE ABOVE NOTED PREMISES PRIOR TO COMPLETING 12 MONTHS OF TENANCY, THE MOVING ALLOWANCE / FOOD VOUCHER WILL BE DEDUCTED FROM THE TENANT'S SECURITY DEPOSIT/ FROM THE (displayed as shown). I find that the aforementioned document is in contravention of Section 20(e) of the Act which provides that a landlord must not require or include as a term of a tenancy that the landlord automatically keeps all or part of the security deposit at the end of the tenancy. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss their claim of \$250.00 for return of the move-in allowance, without leave to reapply.

The Landlord is seeking \$300.00 for liquidated damages as provided under section 3(a)(i) of the tenancy agreement. The Tenant has failed to complete the fixed term of the tenancy agreement causing the Landlord to suffer costs to re-rent the unit prior to the end of the fixed term. In considering the award of liquidated damages I must determine if the amount charged is a penalty or a genuine pre-estimate of the loss that will be suffered by the Landlord if the tenant ends the tenancy prior to the end of the fixed term. Upon further review I have determined that the \$300.00 being charged by the Landlord is not an extravagant amount in comparison to the greatest loss that could be suffered by the Landlord in this situation. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above and I hereby approve their claim in the amount of \$300.00.

As the Landlord has primarily been successful with their claim, I hereby award the Landlord recovery of the 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:

Carpet Cleaning	\$57.75
Liquidated Damages	300.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$407.75</b>
Less Security Deposit of \$375.00 plus interest of \$0.00	- 375.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$32.75</b>

The Landlord requested that an additional copy of my decision be mailed directly to him in addition to a copy being mailed to the Landlord's head office. An audit note has been added to the file listing the Landlord's direct mailing address for which a second copy of this decision will be sent to.

### 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 \$32.75. 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: February 09, 2010.

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Dispute Resolution Officer