

## **DECISION**

Dispute Codes            MNR, MND, MNSD, SS, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and for damage to the unit, site or property. The landlord has also applied to keep the security deposit and to recover the cost of the filing fee. The landlord withdraws his application for an Order for Substitute Service.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; they were given to the tenant in person on October 30, 2009. The tenant has signed the landlords' documents to show he has received them on the date stated.

The agent for the landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. The hearing was reconvened to allow time for the landlords' evidence to reach the Dispute Resolution Officer. There was no appearance for the tenant on either hearing date, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the landlords' testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This tenancy started on May 15, 2008. This started as a fixed term tenancy for one year and then reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,400.00 per month and was due on the first of each month. The tenant paid a security deposit of \$700.00 of which \$200.00 was paid on May 12, 2008 and \$500.00 was paid on May 20, 2008.

The landlord testifies that the tenant paid rent for September, 2009 by cheque, however the cheque was returned as there were insufficient funds available. The landlord issued the tenant with a 10 Day Notice for unpaid rent on September 03, 2009. This was handed to the tenants' roommate. The landlord claims the tenant did not pay the outstanding rent within five days and moved from the rental unit on September 25, 2009.

The landlord testifies that the tenant did not clean the rental unit at the end of the tenancy and left a large amount of garbage at the property. The landlord seeks cleaning costs of \$330.00 for 5.5 hours of cleaning at \$60.00 per hour. The landlord seeks to recover the costs of cleaning the carpets in the unit which were left dirty and stained at a cost of \$223.65. The landlord seeks cost to remove the garbage to the dump and to mow the lawn and has provided two receipts one for \$284.53 and one for \$23.10.

The landlord claims the tenant moved out and put his belongings into the carport. The landlord had to change the locks to prevent the tenant accessing the unit at a cost of \$141.33. The landlord claims the tenant caused some damage to light fixtures and screens and did not replace burnt out bulbs. The landlord replaced these at a cost of \$217.47. The landlord claims the tenant did some damage to the wall in the kitchen, a kitchen bi-fold door, dry wall on basement wall. These repairs involved matching colour and painting, filling dents, cutting out damaged dry wall and replacing, painting walls, re-install baseboards and painting to a total cost of \$435.75.

The landlord seeks to amend his original application as some of the costs were estimated. Now the work has been completed the landlord has also sent the revised information to the tenant.

The landlord has provided invoices and receipts for all repairs, cleaning, and locksmith and garbage removal fees. The landlord has also provided a copy of the move in condition inspection and details of damage and cleaning required when the tenant moved out. The landlord has provided the rent ledger printout showing the unpaid rent for September, 2009

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered all the evidence before me, including the affirmed evidence of the landlords agent; with regard to the

landlords claim for unpaid rent I find the tenant owes rent for September, 2009 to the sum of \$1,400.00 pursuant to section 67 of the *Act*.

With regard to the landlords claim for a Monetary Order for damage, repairs, locks and cleaning to the rental unit; Sections 23 and 35 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenant has not appeared at the hearing to dispute the landlords' evidence or testimony therefore I have applied a test for damage or loss claims as follows:

- 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 the landlord did complete a move in condition inspection which confirms the condition of the unit at the start of the tenancy. The landlord has provided documentary evidence and photographic evidence of the condition of the rental unit and property at the end of the tenancy and has varied the actual amount required to compensate him for the cleaning, repairs, locks and garbage removal. I also find the landlord has mitigated the loss in some areas as he carried out some of this work himself. I find the landlord has therefore established his claim for damage, repairs and cleaning to the rental unit and I find he is entitled to recover **\$330.00** for cleaning costs; **\$223.65** for carpet cleaning; **\$307.63** for garbage removal, trips to the dump and lawn mowing; **\$141.33** for changing the locks as the tenant had moved out but his belongings but remained on the property; **\$217.47** for general repairs; **\$435.75** for decorating and repair costs. As the landlord had provided estimates with his application I have allowed him to amend his application to include the actual invoices for work carried out.

With regard to the landlords claim to keep the security deposit; Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved out, I find the landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep \$700.00 from the tenants' security deposit and accrued interest of \$7.55 to compensate him for the damages.

As the landlord has been successful with his claim I find he is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount.

Unpaid rent for September, 2009	\$1,400.00
Filing fee	\$50.00
Subtotal	\$3,105.83

Less security deposit and accrued interest	(-\$707.55)
<b>Total amount due to the landlord</b>	<b>\$2,398.28</b>

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,398.28**. 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: April 20, 2010.

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Dispute Resolution Officer