

## DECISION

### Dispute Codes

MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 15, 2009. Mail receipt numbers were provided in the Landlord's evidence. The testified that she confirmed through the Canada Post website that the Tenants signed for their registered mail on December 21, 2009 and December 23, 2009. Based on the testimony of the Landlord I find the Tenants have been sufficiently served notice of today's hearing in accordance with the *Act*.

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

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began on May 1, 2009 and ended on November 29, 2009 when the Tenants vacated the rental unit without prior notice to the Landlord. Rent was payable on the first of each month in the amount of \$835.00 and a security deposit of \$417.50 was paid by the Tenants on April 20, 2009. The Landlord completed inspection reports in the presence of the Tenants for the move-in on May 1, 2009, and move-out on November 29, 2009.

The Building Manager testified the Tenants occupied the rental unit immediately across the hall from his unit and that he noticed the Tenants moving their possessions out on November 29, 2009, at which time the Building Manager approached the Tenants and asked what they were doing. The Building Manager stated that he was told the male Tenant had lost his job so they were moving out and they were not going to pay December 2009 rent because he had lost his job.

The Building Manager confirmed that his wife works as a contractor for the Landlord and that she is paid \$35.00 per hour to do the cleaning of the rental unit and the window coverings. The Building Manager confirmed that it took his wife three hours to clean the

unit and window coverings and that the carpets were steamed cleaned by an employee of the Landlord.

The Landlord testified that they are seeking \$835.00 for loss of rent for December 2009 as they were not able to re-rent the unit until February 1, 2010. The Landlord is also claiming \$198.75 in damages which is comprised of \$105.00 for cleaning, \$26.25 for cleaning supplies, and \$67.50 for carpet cleaning. The Landlord argued that they hired a contractor for three hours to clean the unit at \$35.00 per hour and the \$26.25 is an estimate of costs for cleaning supplies used to clean the unit. The Landlord stated that it is company policy to charge carpet cleaning at \$45.00 per hour as it is their employee who cleans the carpets. The Landlord stated that she was certain that their employee is not paid \$45.00 per hour for his wage to clean carpets and reconfirmed that it is company policy to charge this amount to tenants.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Tenants 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 Building Manager.

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

The Landlord is seeking loss of rent for December 2009 given that the Landlord was not given prior notice of the Tenants' intent to end the tenancy effective November 29, 2009. The evidence supports that the Landlord has not been able to re-rent the rental unit until February 1, 2010, which resulted in the Landlord suffering a loss as a direct result of the Tenants' failure to comply with section 45 of the Act. Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for \$835.00 of loss of December 2009 rent.

The evidence supports the rental unit was left in a condition that required additional cleaning, in contravention of section 37 of the Act which provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged. The Landlord paid a contractor three hours at \$35.00 per hour to clean the rental unit and window coverings prior to re-renting the unit for a total amount of \$105.00. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve their claim for \$105.00 for cleaning.

The remainder of the Landlord's claim, consisting of an estimated cost for cleaning supplies and an amount for carpet cleaning based on "company policy" do not meet the test of proof of the actual amount required to compensate for loss. Therefore I find the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss the claim of \$93.75 (\$26.25 + \$67.50) without leave to reapply.

The Landlord has been primarily successful with their claim therefore I award the Landlord 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 Tenants' security deposit as follows:

|   |                 |
|---|-----------------|
| Loss of rent for December 2009                            | \$835.00        |
| Cleaning for 3 hours @\$35.00 per hour                    | 105.00          |
| Filing fee  | 50.00           |
| Subtotal (Monetary Order in favor of the landlord)        | <b>\$990.00</b> |
| Less Security Deposit of \$417.50 plus interest of \$0.00 | -417.50         |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>           | <b>\$572.50</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 **\$572.50**. The order must be served on the respondent Tenants 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: May 11, 2010.

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Dispute Resolution Officer