



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Review Hearing Decision**

### **Dispute Codes:**

MNR, OPR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated March 3, 2010, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. Both parties appeared and gave testimony.

A direct request proceeding was originally held on the landlord's application and orders issued in favour of the landlord on April 7, 2010. The tenant made a successful request for a review hearing, which is before me now.

At the outset of the hearing the parties advised that the tenant had paid some arrears including rent for half of April 2010 and had vacated the unit in mid –May 2010. Therefore the landlord's request for an Order of Possession is no longer at issue.

The Application was amended by the landlord to correct the address and to include a claim for rental arrears owed for part of April 2010 and a portion of May 2010 during which the tenant occupied the unit. The amended application also included a monetary claim for loss of rent for May and June for the unit being un-rentable and other damages including \$45.00 to certify cheques, \$1,500.00 estimated for carpet replacement costs, \$200.00 estimated for cleaning costs. The landlord testified that the amended claim and some of the later evidence had been served on the tenant in person. The tenant denied receiving the amended application and some of the evidence.

### **Issue(s) to be Decided**

The landlord is seeking a monetary order claiming unpaid rent, damages and the \$50.00 cost of filing the application.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to compensation for unpaid rent.

Whether or not the landlord is entitled to monetary compensation for loss of rent and other damages under section 67 of the Act.

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated March 3, 2010 with effective date of March 13, 2010, a copy of the tenancy agreement, a copy of receipts issued to the tenant, a statement of damages and costs and a copy of the move-out inspection report signed by an agent of the tenant.

The landlord testified that the tenancy began on August 1, 2006, at which time a security deposit of \$310.00 and pet damage deposit of \$310.00 were collected. The landlord testified that the tenant failed to pay \$333.50 rent for the second half of April 2010 and \$333.50 rent for the first half of May 2010 during which the tenant resided in the unit. The landlord testified that because the unit was vacant for the second half of May 2010 the landlord incurred a loss of rent of \$333.50 which is being claimed. The landlord testified that the unit is still vacant at present as the carpet is being replaced due to damage caused by the tenant and her pet. The landlord is claiming \$667.00 rental loss for June 2010. In regards to damages, the landlord is seeking reimbursement of an estimated \$1,500.00 for the cost of replacing the damaged 6-year-old carpet and \$200.00 estimated cleaning costs once the carpet repairs have been completed. The landlord was also claiming \$45.00 in bank charges representing the cost to certify 3 of the tenant's cheques. No invoices or formal estimates were submitted into evidence by the landlord. The landlord's application had been amended

to show a claim of \$1,095.50 but based on the landlord's submissions I find the claims add up to a total of \$667.00 for rental arrears, \$1,00.50 for loss of rent, and \$1,745.00 for other damages including carpeting, cleaning and bank charges.

The tenant was in agreement with rental arrears owed of \$333.50 for the remainder of April and \$333.50 for the first half of May 2010. However, the tenant did not agree with the landlord's claim for \$333.50 loss of rent for May, \$667.00 or for loss of rent for June 2010. The tenant also disputed the landlord's decision to replace the carpet on the basis that it could have been cleaned at a cost of \$150.00 instead of being replaced. According to the tenant, the carpet had loop pile that caught in the vacuum cleaner and tended to unravel through no fault or negligence by the tenant. The tenant acknowledged that in the final cleaning some portions of the unit were overlooked, but stated that the it was left reasonably clean. The tenant disagreed with the estimated charges of \$200.00 for cleaning and stated that the cleaning costs should not exceed \$50.00. In regards to the bank charges, the tenant pointed out that it was the landlord's decision to have the cheques certified and the tenant should not be responsible for these costs.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent, but the tenant did not vacate in compliance with the notice but remained in the unit until mid-May. The parties were in agreement that the tenant owed rent for the period of time that the tenant was residing in the unit.

Therefore I find that the landlord is entitled to rental arrears of \$333.50 for April and \$333.50 for May 2010.

In regards to loss of rent for the month of May 2010 and for June 2010, an Applicant's right to claim damages from another party is under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for

damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 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, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred

I find that it is likely that, as a result of the tenant remaining in the unit part way into May 2010, this would cause a loss of rent of \$333.50 for the landlord for which reimbursement is warranted.

However, in regards to the claimed loss of rent for the month of June 2010, I find that this claim fails to satisfy all elements of the test for damages and loss and therefore must be dismissed.

In regards to the claim for replacement carpeting, I accept the tenant's position that the landlord could have attempted to clean the carpet prior to opting for replacement. In regards to the damaged areas, the tenant attributed this to loosely looped pile catching

on the vacuum, and if this is true it would be an issue that may have been beyond the tenant's control. The average useful life of a properly-installed carpet is set at 10 years and the tenant would not be held responsible for normal wear and tear. In any case, the landlord did not submit evidence as to the actual costs incurred. Given that this claim would not satisfy elements 2, 3 or 4 of the test for damages, I find that the tenant should only be responsible for \$150.00 representing what the cost of cleaning the carpet would be. I also accept that the tenant left the rest of the unit in a reasonably clean state with some exceptions and find the landlord entitled to \$50.00 for cleaning costs. In regards to the bank charges, I find that the claim did not satisfy all elements of the test for damages and must be dismissed.

I therefore find that the landlord has established a total monetary claim of \$1250.00 comprised of \$667.00 accrued rental arrears, \$333.50 loss of rent for the latter part of May 2010, \$150.00 for carpet, \$50.00 for cleaning and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security and pet-damage deposits and interest of \$640.10 in partial satisfaction of the claim leaving a balance due of \$560.40.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$560.40. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

June 2010

Date of Decision

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Dispute Resolution Officer