

## **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, regulation, or tenancy agreement, to keep all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that service of the hearing documents was completed by the Resident Building Manager who served the Tenant in person at her place of employment on January 12, 2010, at 11:05 a.m. The Landlord argued that she had submitted into evidence a proof of service document which was signed by the Tenant acknowledging receipt of the hearing package.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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 Landlord testified that she had made three separate submissions of evidence to the Residential Tenancy Branch via fax. The first submission was sent January 11, 2010, and consisted of copies of the two page tenancy agreement, four pages of the application for dispute resolution, and one page of the notice of hearing letter, for a total of seven pages. The second submission was sent January 12, 2010, and consisted of the one page proof of service form. The third submission was sent June 11, 2010 and consisted of one page with a copy of the carpet cleaning bill, one page of an employee time sheet, and one page of a photocopied envelope addressed to the Tenant, for a total of three pages. I advised the Landlord that the hard copy file and the electronic file held only the three pages of evidence submitted June 11, 2010. The Landlord argued the June 11, 2010 was submitted six months after filing her application because she did not have all of the invoices to submit the copies earlier.

The Landlord advised that they had entered into a written fixed term tenancy agreement with the Tenant effective August 1, 2009 which was set to switch to a month to month tenancy after July 31, 2010. Rent was payable on the first of each month in the amount of \$725.00 and the Tenant paid a security deposit of \$362.50 on July 31, 2009. The Landlord testified the Resident Manager was notified by a neighbor that the Tenant was moving her possessions out of the rental unit on October 31, 2009, at which time the Resident Manager approached the Tenant and informed her that she was still responsible for the unit because she did not provide one months notice to end the tenancy. The Landlord stated that the Resident Manager and the Tenant completed and signed a move-in inspection report on July 31, 2009, and the Resident Manager completed the move-out report on November 1, 2009.

The Landlord is seeking a monetary claim in the amount of \$1,322.50 which consists of the following:

- \$137.50 in unpaid rent for October 1, 2009. The Landlord argued it was the regular practise of the Tenant to short pay her rent and catch up later in the month so the Resident Manager had been working with the Tenant to keep her rent current; and
- \$725.00 for loss of rent for November 1, 2009 as the Landlord was not able to re-rent the unit until December 1, 2009. The Landlord argued she had six vacancies in this building in November 2009 and while they advertised regularly they were not able to fill this unit until December 2009; and
- \$250.00 for liquidated damages as provided in section 5 of their tenancy agreement. The Landlord testified the liquidated damages were charged to cover the costs of advertising and the extra work for the managers the turn over causes such as cleaning and showing the suite; and
- \$120.00 for the costs of cleaning the rental unit at \$30.00 per hour. The Landlord referred to her evidence submitted June 11, 2010, of a copy of a timesheet submitted by the Resident Manager which supports he spent 4 hours cleaning the kitchen, the stove, the oven, and the fridge on November 4, 2009. The Landlord argued that the resident managers are paid wages for managing based on the number of units or doors in the rental building and an hourly rate for any cleaning that is performed; and
- \$90.00 for carpet cleaning. The Landlord testified that carpet cleaning was performed in the rental unit on November 1, 2009.

### Analysis

All of the testimony and documentary evidence was carefully considered.

The Landlord testified that three separate packages of evidence were faxed to the residential tenancy branch stating the number of pages sent and the dates faxed. The Landlord confirmed the same evidence was served to the Tenant. The evidence is not uploaded into the electronic file and was not placed on the hard copy file; therefore I requested the Landlord to send the documents to my direct fax, after the hearing, along with a fax log from her fax machine to support these faxes were previously sent.

A fax was received from the Landlord on June 18, 2010 at 10:25 a.m. consisting of the eight pages of evidence and a fax cover sheet. A copy of this fax is attached to my decision in order to uphold the principles of natural justice. I note there was no fax log provided by the Landlord with this fax.

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 \$137.50 for unpaid rent for October 1, 2009 as the Tenant only paid \$587.50 towards the October 2009 rent. Section 26 of the Act provides that a tenant must pay the full rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I approve their claim of \$137.50 in unpaid rent.

Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month

after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case the evidence supports the Tenant moved out with no notice to the Landlord causing the Landlord to suffer a loss for November 2009 as the Landlord was not able to re-rent the unit until December 1, 2009. Based on the aforementioned I find the Landlord has proven the test for loss, as listed above and I approve her claim of \$725.00 for loss of November 2009 rent.

Section five of the tenancy agreement entered into by the parties on July 31, 2009, provides that if the tenant ends the fixed term tenancy before the end of the original term the landlord may treat the agreement as being at an end and the Tenant will pay the Landlord the sum of \$250.00 for liquidated damages. When assessing a claim for liquidated damages I must determine if the amount agreed to in the tenancy agreement is a genuine pre-estimate of the loss the landlord will suffer from ending the agreement early. I accept the Landlord's evidence that the \$250.00 represents the costs incurred for advertising the vacancy and the labour costs to show the unit and process the documents to finalize a new tenancy. I find the Landlord has met the requisite burden of proof and I approve their claim for \$250.00 in liquidated damages.

The Landlord referred to a copy of a November 2009 timesheet which lists the Tenant's rental unit and cleaning to the kitchen and appliances for four hours. The Landlord is seeking \$120.00 (four hours at \$30.00 per hour) for the cost of this cleaning. The Landlord argued that tenants are told by the property managers at the beginning of the tenancies that if they fail to clean the rental unit they will be charged \$30.00 per hour for any cleaning that is required. The Landlord confirmed that this information is not provided to tenants in writing and then argued that her property managers are paid an hourly rate for cleaning over and above their per unit management fees. I note the Landlord did not submit documentary evidence as proof that the property manager was paid \$30.00 per hour to clean this unit nor did she provide a copy of the move-in and move-out inspection report or other evidence to support that the unit required cleaning. Based on the aforementioned I find the Landlord has failed the burden of proof and I hereby dismiss her claim for \$120.00 for cleaning the rental unit.

The Landlord is claiming \$90.00 for carpet cleaning and submitted her evidence on June 14, 2010, in the form of a receipt in the amount of \$89.25 which has no date listed of when the work was performed, no date of when the invoice was issued, and no date when the invoice was paid. The Landlord testified that this last submission of evidence could not have been sent sooner (prior to June 14, 2010) as the Landlord was awaiting copies of all of the receipts. In the absence of evidence to support the condition of the

rental unit at the onset of the tenancy and at the end of the tenancy; and given the fact this tenancy ended October 31, 2010, almost eight months prior to when the Landlord had copies of the invoice to submit into evidence; and the fact that the unit was re-rented almost six months ago; I find the Landlord has failed to prove the Tenant was the cause of this loss. Therefore I dismiss the Landlord's claim of \$90.00 for carpet cleaning.

The Landlord has been partially successful with their application and therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for October 2009	\$137.50
Loss of Rent for November 2009`	725.00
Liquidated damages	250.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$1,162.50</b>
Less Security Deposit of \$375.00 plus interest of \$0.00	- 362.50
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$800.00</b>

#### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$800.00**. 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: June 18, 2010.

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Dispute Resolution Officer