

## **DECISION**

### **Dispute Codes:**

CNR, MNR, MNSD, MNDC, MND, OPR, FF

### **Introduction**

This hearing was convened in response to an amended application by the landlord and an application by the tenant.

**The Landlord** applied for dispute resolution for:

- Order of Possession due to Unpaid Rent
- A Monetary Order to recover rental arrears, damage to the rental unit, and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement comprised of:
  - Rental arrears - \$1400
  - loss of revenue for June 2010 - \$700
  - costs for remediation of rental unit at end of tenancy - \$6630
- Order to retain the security deposit in partial satisfaction of the monetary claims.
- Recover filing fee - \$50.

**The Tenant** applied for dispute resolution to :

- Cancel Notice to End for Unpaid Rent dated April 13, 2010.

The landlord attended the conference call hearing. The tenant **did not**. I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act). In the absence of an appearance by the tenant, the tenant's application is **dismissed in its entirety**, without leave to reapply.

At the outset of the hearing the landlord advised that the tenant had vacated the rental unit in the past week (May 27-June 03), and that an Order of Possession is therefore not necessary. The portion of their application for an Order of Possession is **dismissed**. The landlord's application continued on its merits as a monetary claim. The landlord participated with their submissions, testimony and document evidence, and were permitted to ask questions.

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed testimony of the landlord is that the tenancy began on February 01, 2009. Rent in the amount of \$700 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350. The landlord testified there was no start of tenancy inspection conducted. The tenant failed to pay rent in the month of April 2010 and on April 13, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of May 2010. The landlord testified that the rental unit remains full of garbage and abandoned property of the tenant, and the rental unit has suffered extensive damage, which, for all aspects, the landlord estimates will require over 30 days for remediation and repairs. The landlord has not had opportunity to fully survey the extent of the damage inside the rental unit as the tenant has not permitted the landlord access, but from all indications externally and from a third party inspection employed by the landlord, the landlord is confident the unit is not near ready for occupancy. The landlord requests loss of revenue for June 2010 in the amount of \$700. The quantum of the landlord's monetary claim for unpaid rent and for loss of revenue is **\$2100**.

The landlord claims the tenant has caused extensive damage to the rental unit in the period of March 20 – May 6, 2010, and may well have caused additional damage since May 06, 2010.

The landlord testified and provided document evidence that on March 20, 2010 they hired a property inspector to inspect for mould issues and safety concerns. The same inspector performed a re-inspection on May 06, 2010 and listed, in a report sent to the landlord dated May 10, 2010, that apparent damage had occurred inside the rental unit since the first inspection of March 20, 2010. The report itemized the damage the inspector claims in his report was not there at the time of their prior inspection. The property inspector was not available as a witness, although the landlord provided their report.

The landlord submitted that prior to the property inspector's re-inspection on May 06, 2010; the landlord personally inspected the rental unit on April 26, 2010 and noted extensive damage to the unit, which they identified in a letter to the tenant. The landlord provided the letter, dated April 28, 2010. The letter lists most of the items detailed in a comprehensive estimate of costs, prepared by the landlord.

The landlord provided the detailed estimate of costs for all the deficiencies and damage noted by the landlord and the property inspector. The landlord's estimates are to repair all the purported damage based on estimates for labour, trades costs and cost of materials – to a total of \$6630.

### **Analysis**

I have considered all evidence and all submissions of the landlord and have considered all testimony given in the hearing.

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and although they applied for dispute resolution to dispute the notice they did not attend this hearing to provide any valid or relevant evidence upon which to dispute the landlord's claim. I find the landlord is entitled to unpaid rent in the amount of **\$1400**.

I accept the landlord's evidence and testimony that the current condition of the rental unit does not permit the landlord to immediately re-rent it. Therefore, I grant the landlord loss of revenue for the month of June in the amount of **\$700**.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Section 7 of the Residential Tenancy Act (the *Act*) states :

**Liability for not complying with this Act or a tenancy agreement**

- 7 (1) 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 damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As a result, the applicant must satisfy each component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss occurred 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 reasonable steps to minimize the loss or damage.

Therefore, the claimant bears the burden of establishing their claim. The claimant must prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

I find that while the landlord has presented a case that the rental unit has suffered damages, I have only been provided with the landlord's estimate for their remediation - without verification or proof upon which an Arbitrator can determine the validity of the amounts claimed and that these amounts are reasonable. On this basis, the landlord has not met the above test. As a result, **I dismiss** this portion of the landlord's claim; however, I do this *with* leave to reapply.

I find the landlord's application has merit, and the landlord is therefore entitled to recovery of the filing fee from the tenants for the cost of this application in the amount of **\$50**.

The landlord's total entitlement is **\$2150**.

### **Conclusion**

The tenant's application is **dismissed** without leave to reapply.

I order the landlord retain the security deposit of \$350 in partial satisfaction of the monetary claim, and I grant the landlord a Monetary Order under section 67 of the Act for the balance of **\$1800**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.

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