DECISION

Dispute Codes:
MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord for:

- A Monetary Order to recover costs for damage to the rental unit, and for money owed or compensation for damage or loss under the Act Regulation or tenancy agreement. (loss of revenue),
- An order to retain the security deposit in partial satisfaction of the monetary claims.
- Recovery of the filing fee associated with this application in the amount of $50

The burden of proving the claim rests with the applicant in this matter – the landlord

Both parties attended the conference call hearing. Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord's claim on application is as follows:

Loss of rent revenue for March 2010	$975.00
Cleaning of suite – 1 bedroom – 20 hours	$487.50
Door repairs bed/ bath rooms	$113.91
Replacement of interior doors (2)	$116.48
Paint sample for bathroom	$9.23
Replacement of fridge door	$566.07
Hood fan filter – replace / missing	$11.54
Labour to paint, install accessories and 'hang' door	$110.00
Litigation cost – service of documents	$30.00

Filing fee for this application	$50.00
From tenant / gift card	-60.00
Total of landlord's claim *on application*	**$2409.73**

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. The tenancy began on February 17, 2009 and ended February 28, 2010. Rent in the amount of $975 was payable in advance on the first day of each month, plus the cost of utilities. At the outset of the tenancy both parties attended a start of tenancy inspection. The landlord collected a security deposit of $487.50 and a pert damage deposit of $487.50 – which the landlord still holds. At the end of the tenancy an end of tenancy inspection was not conducted by both parties, although the landlord subsequently conducted an inspection and forwarded a copy of their inspection to the tenant. The parties do not agree on the damages or the related claimed costs for remediation.

The landlord testified that the tenant provided notice to vacate on February 07, 2010 – for February 28, 2010. Despite the 'short notice' from the tenant the landlord was able to re-rent the unit for March 2, 2010 but for a lesser amount than full rent. The landlord claims they discounted the rent by half so as to accommodate the new tenant and mitigate loss of revenue. The tenant disputes that the landlord should have discounted the rent by $487.50 (one half month) when the landlord was completed any remediation work after the first week.

The landlord claims they attempted to enlist the tenant's involvement so as to conduct a mutual inspection at the end of the tenancy by phoning them several times using the phone number on file for the tenant – without success. The tenant claims they were not notified by the landlord as the landlord did not use a current phone number for the tenant. However, the tenant claims they and the landlord viewed and discuss the condition of the suite near the end of the tenancy and came to some verbal agreement as to what required remediation, different than what the landlord is now claiming.

The landlord claims cleaning costs for the unit. The tenant does not dispute that the unit required cleaning, however, they dispute the landlord's claimed amount to clean the unit as a reasonable cost.

The landlord claims repairs to doors – without painting - which the tenant does not dispute.

The landlord claims costs for replacement of 2 doors - which the tenant does not dispute.

The landlord claims cost of installing door handles, and a bi fold door.

The landlord claims cost of replacing a stainless steel refrigerator door with some dents on fridge and freezer doors, which the landlord deems are slight but unsightly. The landlord has not replaced the door and has provided an estimate for the replacement. The tenant does not deem it reasonable for the replacement / cost of the door as the dent damage are two (2) small indentations the size of “a dime”.

Analysis

On the preponderance of the evidence and on the balance of probabilities, and having I have considered all evidence, testimony in the hearing, and all submissions to this claim I have reached a decision.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party 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 mitigate or minimize the loss or damage.

When a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. 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 reasonably mitigate the damage or losses that were incurred.

On the balance of probabilities and on the preponderance of all the evidence before me, I find the landlord has partially met the test for their claim of damages and loss.

I find the landlord has not met their burden in respect to cleaning costs for the unit. Nonetheless, I accept the landlord and tenant's testimony that the rental unit required some cleaning. I grant the landlord **$200** for cleaning costs, without leave to reapply.

I find the landlord is entitled to remediation costs for repair or replacement of doors, inclusive of their installations and accessories – but without consideration for painting or painting accessories. The landlord has submitted hybrid claims inclusive of several different types of costs. Therefore, **I grant** the landlord an aggregate or *global* amount of **$219.82** for these related costs, without leave to reapply.

The landlord is entitled to the cost of replacing the hood fan filter in the amount of **$11.54.**

The landlord's claim for litigation costs for service of documents is **dismissed.** Such costs are not compensable under the Act.

The tenant disputes the landlord's claim to replace the refrigerator door as unreasonable, given the extent of the damage. I note the landlord has not replaced the refrigerator door, and I accept the landlord's and tenant's evidence that the nature of the damage is primarily, if not wholly cosmetic. However, the damage is there nonetheless, and I find the landlord is entitled to compensation as the refrigerator no longer cosmetically appears as it should. I grant the landlord **$200** for the refrigerator door damage, without leave to reapply.

I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

7. 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.

7(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.

If, due to the tenant's non-compliance with the Act, the landlord is able to prove they incur a loss of revenue, the landlord is then able to claim compensation. In this case, the landlord was able to re-rent the unit on March 2, 2010, thus mitigating revenue losses, but was obligated to discount the rent by one half month's rental value of $487.50 as the landlord required access to the unit to complete repair of deficiencies at the end of the tenancy. I find the landlord's claim for loss of rental revenue in the amount of **$487. 50**, as reasonable, and grant the landlord this amount, without 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 in the amount of **$50.**

I order that the landlord retain the security and pet damage deposits of **$975** in partial satisfaction of the landlord's entitlement claim.

As for the monetary order, I find that the landlord has established an entitlement as follows:

Loss of rental revenue for March 2010	$487.50
Cleaning of suite – 1 bedroom – 20 hours	$200
Door repairs bed/ bath rooms	$219.82
Replacement of interior doors (2)	*Incl.*
Paint sample for bathroom	*Incl.*
Labour to paint, install accessories and 'hang' door	*Incl.*
Replacement of fridge door	$200.00
Hood fan filter – replace / missing	$11.54
Filing fee for this application	$50.00
From tenant / gift card	*(-60.00)*

Deposits off-set	*(-975.00)*
Total of landlord's entitlement	**$133.86**

Conclusion

I grant the landlord an order under Section 67 of the Residential Tenancy Act for the amount of **$133.86**

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*.