

DECISION

Dispute Codes MNSD MNR MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, for damage to the unit, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 16, 2010. A copy of the Canada Post tracking website was provided in the Landlord's evidence which supports the hearing packages were successfully delivered on March 22, 2010. The Tenant is deemed to be served the hearing documents on March 27, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. The Tenant failed to attend despite being served notice of today's hearing in accordance with the Act.

Issue(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 referred to her documentary evidence in support of her testimony which included, among other things, a copy of the tenancy agreement, a summary of the Landlord's claim and evidence, copies of NSF cheques, copies of e-mails between the

Landlord and Tenant, a copy of the move-in inspection report, copies of advertisements to re-rent the unit, and copies of receipts for services and materials purchased.

The tenancy began as a fixed term tenancy agreement effective April 1, 2008 and switched over to a month to month tenancy after March 31, 2009. The rent was payable on the first of each month in the amount of \$1,800.00 and the Tenant paid a security deposit of \$900.00 on March 22, 2008. A move-in inspection report was completed on March 27, 2008.

The Landlord argued that when the Tenant's December 1, 2009 rent cheque was returned NSF she attempted to contact him. She stated that it was on December 23, 2009 when the Tenant e-mailed her and told her he had vacated the rental unit, had put his possessions in storage, acknowledged damage to the unit, and requested the Landlord keep his security deposit as payment for December's rent.

The unit was advertised for rent from December 26, 2009 and was re-rented at a lower price as of March 1, 2010. The Landlord is seeking unpaid rent for December 2009 of \$1,800.00; loss of rent for January 2010 of \$1,800.00; \$70.00 to repair the bathroom door jamb; \$71.66 to replace the bathroom door and front door locks and argued that the bathroom door handle was damaged and the Tenant did not return the keys so a new handle was purchased for the main entrance; \$43.23 to replace light bulbs, vent cover, and light switch cover plate; \$24.00 for landfill charges; \$42.00 to purchase paint to repair walls and trim; \$175.00 for the drywall repairs and patching; \$64.65 (\$74.65 less \$10.00 deposit) for carpet cleaning on January 4, 2010; \$19.17 for light bulb replacements; and \$50.00 to replace the garage door remote.

The Landlord stated that they were required to clean the entire unit, including all of the appliances; remove waste to the landfill; plus repair the damages and most of the work was performed by herself, her husband and her father in-law as follows:

December 29, 2009, 9:30 a.m. to 5:30 p.m. – 2 adults

December 30, 2009,	9:30 a.m. to 2:30 p.m. – 3 adults (3 + 5.5 + 4.5 hrs)
December 31, 2009,	8:30 a.m. to 4:30 p.m. – 2 adults
January 2, 2010,	9:00 a.m. to 5:00 p.m. – 1 adult
January 3, 2010,	12:00 p.m. to 5:00 p.m. – 2 adults
January 4, 2010,	11:00 a.m. to 6:00 p.m. – 2 adults

Although it took over 67 hours to return the rental unit to a rentable condition, the Landlord is seeking only 50 hours of labour at \$20.00 per hour for a total amount of \$1,000.00 for their time to repair and clean the rental unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

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

Claim for unpaid rent - The landlord claims for unpaid rent of \$1,800.00 for December 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent.

Loss of rent – Section 45 of the Act provides that a tenant may end a periodic 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, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case the Tenant e-mailed the Landlord on December 23, 2009 to inform her he was ending the tenancy, therefore in accordance with Section 45 of the Act, the tenancy would end on January 31, 2010. Therefore the Tenant was responsible for January 2010 rent if the property had not been re-rented. The evidence supports the Landlord advertised the unit as of December 26, 2009, did what was required to mitigate her losses, and the unit was not re-rented until March 2010. Based on the aforementioned I find the Landlord has proven the test for loss of rent for January 2010.

Bathroom Door Jamb Repair – The photo evidence support the bathroom door jamb was damaged and required repair. The Landlord submitted a hand written receipt which supports her testimony that she hired a contractor from the internet who attended the rental unit on January 4, 2010 and provided materials and labour to repair the door jamb at a cost of \$70.00. In the presence of a move-in inspection report I find the Landlord has proven the damage was caused during the tenancy and therefore has proven the test for damage or loss as listed above. I hereby approve the Landlord's claim of \$70.00.

Door Handle/Lock Replacement – The Landlord argued the bathroom door handle was broken after the door was kicked in and the front door lock had to be replaced. After reviewing the photo evidence I find that on a balance of probabilities the bathroom lock

was most likely damaged after the door was kicked in and therefore had to be replaced. The evidence supports the Tenant failed to return the keys for the unit, in contravention of section 37 (2) of the Act. One could argue that it is less expensive to replace a lock than to pay for a locksmith for a service call plus the fee to re-key the lock. Based on the aforementioned I find the Landlord has proven the test for damage and loss and I approve their claim for \$71.66

Light Bulbs & Plate Covers – While the evidence supports the Landlord paid \$43.23 for items purchased on December 29, 2009, the Landlord was not able to testify what the specific items were except for a register cover and one light switch plate. In the absence of a move-out inspection report I am not able to determine the type or quantity of bulbs that were required to be replaced or if the other items that were purchased were for the rental unit. Based on the aforementioned I hereby find the Landlord has proven the test for damage or loss for the plate cover and register cover; I hereby approve the claim in accordance with section 67 of the Act for the amount of \$5.89.

Landfill Charges – The Landlord provided evidence of two trips taken to the landfill on December 30, 2010, for the cost of \$12.00 per trip. The photographic evidence supports the Landlord's claim that the Tenant left waste in the rental unit which had to be disposed of, in contravention of section 37 of the Act which stipulates that a tenant must leave the rental unit reasonably clean at the end of the tenancy. Therefore I hereby approve the Landlord's claim in the amount of \$24.00.

Paint Costs – In the presence of the move-in inspection report which supports that the rental unit was in good condition at the onset of the tenancy and the photos which were taken at the end of the tenancy, I find the Landlord has proven their claim that the walls and trim were required to be repainted. Therefore I approve the Landlord's claim for \$42.00 for wall and trim paint.

Drywall Repairs – In this case the evidence supports the drywall was damaged during the tenancy which caused the Landlord to suffer a loss of \$175.00. The Landlord has

proven the test for damage or loss and I hereby award them \$175.00 for the repair costs to the drywall.

Carpet Cleaning Costs – The evidence supports the Tenant abandoned the rental unit without cleaning the carpet which caused the Landlord to suffer a loss of \$64.65 (\$74.65 less the \$10.00 deposit which was refunded). Therefore I approve their claim in the amount of \$64.65.

Light Bulbs – The Landlord submitted a receipt in the amount of \$19.17 and argued that this receipt was for the second purchase of light bulbs. I note that the receipt is the visa receipt and not the cash register receipt which would display the actual items purchased. As there is no description of what was purchased I find the Landlord has failed to prove the test for damage or loss, as listed above, and I hereby dismiss this claim.

Garage Remote – The Landlord is seeking \$50.00 for the cost of a garage remote however the Landlord did not provide a receipt in support of her claim that the remote was replaced. Therefore I find the Landlord has failed to provide sufficient evidence that she suffered a loss of \$50.00 and I hereby dismiss her claim.

Labour Costs – The Landlord provided evidence that it took three adults a total of sixty seven hours to clean and repair the rental unit and that this work was completed over a period of six days. The Landlord has reduced her claim to 50 hours of labour at a cost of \$20.00 per hour. The move-in inspection report proves that the rental unit was in good clean condition at the onset of the tenancy and the photographic evidence proves the unit was damaged and unkempt at the end of the tenancy. Based on the aforementioned I find the Landlord has proven the test for damage and loss, as listed above, and I hereby approve their claim of \$1,000.00 for labour costs.

Filing Fee \$50.00 - I find that the Landlord has primarily succeeded with her claim and I hereby award recovery of the 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 Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for December 2009	\$1,800.00
Loss of Rent for January 2010	1,800.00
Bathroom door jamb repair	70.00
Bathroom door and main door lock replacement	71.66
Light bulbs, plate covers, register cover	5.89
Landfill fees	24.00
Paint – wall and trim	42.00
Drywall Repair	175.00
Carpet Cleaning	64.65
Labour Costs	1,000.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$5,103.20
Less Security Deposit of \$900.00 plus interest of \$10.51	-910.51
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$4,192.69

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim, in accordance with section 67 of the *Residential Tenancy Act*. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$4,192.69**. 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: July 13, 2010.

Dispute Resolution Officer