

## **DECISION**

Dispute Codes      MND, 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 damage to the rental unit and for money owed or compensation for damage or loss under the Residential tenancy Act (act), regulations or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

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 31, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on April 05, 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. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

## Background and Evidence

The landlord testifies that this tenancy started on July 01, 2009 and ended on March 17, 2010 after the tenant was given a 10 Day Notice for unpaid rent. This was a fixed term tenancy which was due to expire on June 30, 2010. Rent for this unit was \$750.00 per month and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$375.00 on June 26, 2009. A Move in and Move out condition inspection was carried out at the beginning and end of the tenancy.

The landlord states the tenant paid rent for March, 2010 however her cheque was returned as there were insufficient funds available (NSF). The landlord issued the tenant with a 10 Day Notice to End Tenancy on March 04, 2010 by posting this to her door. The tenant vacated the rental unit on March 17, 2010 in accordance with the 10 day Notice.

The landlord has provided advertising receipts showing how she attempted to re-rent the unit for March, April, May and June and she testifies the unit was not re-rented until July 01, 2010. The landlord seeks to recover rent for these months to the sum of \$3,000.00

The landlord has provided a copy of the tenancy agreement in which it states the landlord will charge the tenant \$25.00 for any NSF cheques. This agreement also states that the landlord will charge the tenant \$350.00 in liquidated damages to cover the costs involved in re-renting the suite because the tenant broke the lease before the end of the fixed term.

The landlord testifies that the tenant caused some damage to the suite. At the move out condition inspection it was noted that the walls had been damaged and required re-painting at a sum of \$367.50; the tenant had left the unit unclean and the landlord employed the services of a cleaner at a cost of \$102.38; the tenant had caused some

staining on the carpet which the landlord had to clean at a cost of \$61.95 and the tenant did not wash three sets of drapes which the landlord had cleaned at a cost of \$30.00. The landlord also found some staining to the linoleum floor in the dining room which could not be cleaned and which was repaired at a cost of \$183.75. The landlord has provided a copy of the condition inspection reports which show the tenant has signed to agree to these damages caused during her tenancy and which also agrees the landlord may keep the tenants security deposit in partial payment of these damages.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant. I have applied a test for the landlords claim for damages and loss as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
- Proof that the claimant followed S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support her claim and she is able to meet all of the components of the above test. The landlord has provided

evidence to show the tenant did not pay rent for March, 2010 and that the landlord re-advertised the unit for March, April, May and June, 2010 in an attempt to re-rent it in order to mitigate her loss; I find the landlord has provided evidence in the form of the tenancy agreement and the move in and move out condition inspection reports detailing the damage to the rental unit, the NSF fees and the liquidated damages fee; I find the landlord has provided sufficient evidence to show the actual costs of the cleaning, painting and repairs to the unit. Therefore, I find that the landlords' application is upheld and she is entitled to a monetary award to the amount of **\$4,120.58**.

I also Order, pursuant to Section 38 of the *Act*, that the landlord may retain the full security deposit of **\$375.00** towards the damages to the rental unit.

As the landlord has been successful with her claim I further find she is entitled to recover the cost of **\$50.00** for filing her application from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord, pursuant to section 67, of the *Act* for the following amount:

Unpaid rent and NSF fee	\$3,025.00
Carpet and drape cleaning	\$91.95
Cost of repair to walls and painting	\$367.50
Repair to the linoleum	\$183.75
Liquidated damages as per tenancy agreement	\$350.00
Filing fee	\$50.00
Subtotal	\$4,170.58
Less security deposit	(-\$375.00)
<b>Total amount due to the landlord</b>	<b>\$3,795.58</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,795.58**. 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 26, 2010.

---

Dispute Resolution Officer