



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit, and unpaid rent, and for money owed for loss of revenue following a fixed term lease. The landlord also applied to retain the security deposit in partial satisfaction of the monetary claims.

Both parties participated in the hearing with their relevant submissions, relevant document evidence and were permitted to provide relevant testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

It is noted that the administration of the security deposit was already determined by a Decision and Order of a Dispute Resolution Officer subsequent to an application brought about by the tenant for the return of the security deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

Is the landlord entitled to a monetary order in the amount claimed for loss of rental revenue?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started October 01, 2009 and ended December 16, 2009. The term of the tenancy was a fixed term starting October 01, 2009 and ending March 31, 2010. Rent was \$815 per month payable in

advance of the 1st. day of the following month. The parties also agree that at the outset of the tenancy the landlord also collected the rent for the last month specified in the tenancy agreement – \$815 for March 2010 – although the tenancy agreement does not reflect this term or condition, and I do not have benefit of any documentation in respect to this arrangement. None the less I accept the parties' testimony as their oral evidence on this matter, and I accept the tenant's dispute of this amount – which the landlord references as a "security deposit". At the start of the tenancy the landlord also collected a separate security deposit equivalent to one month's rent of \$800 – which the landlord claims he still holds and has made application to retain it.

At the start of the tenancy the parties conducted a walkthrough of the rental unit but the landlord did not record the outcome of the inspection on a condition inspection report. At the end of the tenancy the tenant left abruptly and the parties did not do a move out condition inspection. The landlord subsequently performed his own inspection and purportedly e-mailed the tenants with his assessment of deficiencies and damage – with which the tenant disagrees.

The landlord's monetary claim is as follows:

Balance of rent for October 2009	\$289.20
Loss of rental revenue for January 2010	\$815.00
Loss of rental revenue for February 2010	\$815.00
NSF charges for cancelled cheques for January and February 2010-09-27	\$ 85.00
Damages to rental unit	\$753.54
Replacement of area carpet (Babak's)	\$356.25
2 Comforters, 1 water proof mattress pad	\$118.66
Cleaning	\$ 75.00
Registered mail costs	\$ 31.34

Total of claim \$3338.99

The landlord claims that the tenants did not pay a portion of the rent for October 2009. The tenant agrees that they deducted a portion from the month's rent as they did not move into the suite until October 12, 2009.

The landlord claims loss of revenue for two months following the tenant's departure from the suite in mid-December 2009 – for January and February 2010. The landlord

testified that in his calculations he has already received the rent for March 2010. Upon the tenant vacating the rental unit the landlord testified that he immediately attempted to mitigate rental revenue losses by advertising in the local college housing postings, the billboards at the college, at the local ferry, and online at 'Vacation Rental 411'. The landlord provided the online postings in his evidence. The landlord claims the advertising did not result in the re-rental of the unit.

Analysis

The administration of the security deposit which the landlord purports to still hold has been previously determined by a decision and Order of an Arbitrator. The landlord's request to retain it is moot. The matter of the security deposit is '*Res Judicata*', or previously dealt with in the appropriate forum. This component of the landlord's application is therefore **dismissed**, without leave to reapply.

In respect to the landlord's claim for damages to the unit, under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

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 (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or 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.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their 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 mitigate the damage or losses that were incurred.

The landlord relies on their assertion that the tenant caused the purported damage. In the absence of move-in and move-out inspection reports and in the absence of the landlord's report purportedly completed after the tenant vacated, I find the landlord has not provided proof that the damages were the sole result of the tenancy or the conduct of the tenant. The landlord has not fully met the test for damages and loss. None the less the landlord has provided some evidence toward their claim that the tenant in this matter caused some damage to the rental unit. In the absence of a rebuttal from the tenant I grant the landlord the amount claimed for remedial work as depicted in the invoice from the renovation company in the amount of **\$753.54**.

I dismiss the landlord's claim in respect to replacement of the "dirty" carpet, 2 comforters and vinyl barrier. These are typically cleanable items and the landlord has not shown mitigation for these claims.

I dismiss the landlord's claim in respect to cleaning, without leave to reapply. The landlord's claim for cleaning is not supported by the results of a condition inspection report, and is disputed by the tenant.

The landlord's claim for mailing costs is not a compensable cost under the Act. Mailing costs are litigation costs, which must be borne by the applicants – therefore this portion of the landlord's claim is **dismissed**, without leave to reapply.

I accept the landlord's claim for unpaid rent of **\$289.20**, and grant the landlord this amount.

I accept the landlord's claim for NSF charges in the amount of **\$85**, and grant the landlord this amount.

I further accept the landlord's claim for loss of revenue for the month of January 2010 in the amount of **\$815**.

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.

In this case, the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss of revenue beyond the month of January 2010 resulted from the tenant's failure to comply with the Act. Rather, the landlord testified that their loss resulted from a lack of tenants interested in the rental unit. As a result, I decline to grant the landlord their claim for loss of revenue for February 2010, without leave to reapply.

The parties provided testimonial evidence that the landlord secured an extra month's rent destined for the last month of the tenancy agreement – of March 2010. I find that in the absence of a contractual agreement by the tenant the landlord is prohibited from collecting more than a security deposit as prescribed by the Act. Sections 19 and 20 of the Act state as follows:

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Landlord prohibitions respecting deposits

- 20** A landlord must not do any of the following:
- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
 - (b) require or accept more than one security deposit in respect of a tenancy agreement;
 - (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or

- (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

As a result of all the above, the amount of \$800 purported to be held by the landlord as a *security deposit* destined for the month of March 2010 will be off-set from the award made herein.

As the landlord has been partially successful in their application, I grant the landlord partial recovery of the filing fee in the amount of **\$25**.

I grant the landlord a Monetary Order in the amount calculated as follows:

Balance of rent for October 2009	\$289.20
Loss of rent revenue for January 2010	\$815.00
Repairs to rental unit	\$753.54
NSF charges	\$85.00
Partial Filing Fees for the cost of this application	25.00
Less additional <i>Security Deposit</i> collected by the landlord at the outset of the tenancy	-800.00
Total Monetary Award to landlord	\$1167.74

Conclusion

Any previous Monetary Orders in respect to this tenancy remain valid and fully enforceable. The parties have been previously and are currently apprised as to their enforcement, if necessary, of such Orders.

I Order that the landlord retains any additional *security deposit* they currently hold and I grant the landlord an order under Section 67 of the Act for the amount of **\$1167.74**. 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*.