

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she sent the tenant a copy of the application for dispute resolution by registered mail on July 18, 2010. She provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the application for dispute resolution was sent in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss or damage caused during this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that this one-year fixed term tenancy commenced on October 1, 2009. Monthly rent was set at \$650.00. The landlord testified that she continued to hold the tenant's \$325.00 security deposit paid on September 17, 2009 and the tenant's \$325.00 pet deposit paid on November 12, 2009.

The landlord testified that the tenant vacated the rental premises on July 7, 2010, following the issuance of an Order of Possession by another Dispute Resolution Officer. She said that the tenant paid a pro-rated portion of the July 2010 rent before she vacated the rental premises. She testified that the tenant was unable to remove the smell of pet urine from the carpets, requiring a replacement of the carpets and some tiles at a cost of \$2,800.00. She also provided evidence that she had to have a flea infestation treated at a cost of \$192.00. She testified that she was unable to rent the premises for the remainder of July, or any of August or September 2010. She asked for a monetary Order for these portions of the fixed term tenancy which she has been unable to rent since the tenant vacated the premises.

The landlord provided photographic evidence regarding the condition of the premises before and after this tenancy, and letters and documents relating to the landlord's claim. Although she testified that a move-in and move-out condition inspection report was prepared and a copy sent to the tenant by registered mail, this report was not part of her evidence package submitted to the Residential Tenancy Branch. She said that she conducted the move-out condition inspection on August 10, 2010 when the tenant did not attend the second scheduled inspection.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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.

I accept the landlord's undisputed testimony that the landlord incurred loss of rent for July, August and September 2010 stemming from this tenancy. The damage caused by

many animals that were staying in the rental premises during this tenancy required considerable work to refurbish the rental premises. I accept the landlord's undisputed testimony that she has tried to rent these premises, but has been unsuccessful in doing so during the course of the remainder of the tenant's fixed term tenancy.

I grant the landlord the following monetary award for loss of income for these months:

Item	Amount
Loss of Rent for July 2010 Rent (July 8 – July 31) $\$650.00 \times 24/31 = \503.23	\$503.23
Loss of Rent - July 2010	650.00
Loss of Rent - August 2010	650.00
Total Monetary Award for Loss of Rent	\$1,803.23

The anticipated useful life of carpet as set out in Residential Tenancy Policy Guideline #37 is 10 years. The landlord testified that the carpet that had to be replaced as a result of the urine and feces damage caused by the tenant's animals was likely the original carpet installed approximately 15 years earlier. While the tenant provided photographs and a receipts for carpet and tile replacement, she did not enter into evidence copies of the move-in and move-out condition inspection reports. I make no monetary award regarding the landlord's replacement of carpet and tiles in the rental premises.

The landlord provided no receipts to confirm her request for compensation for \$192.00 in flea treatment she maintained was required as a result of this tenancy. Since the landlord has not met the burden of proof required for this expense, I make no monetary award for the landlord's application for reimbursement for this item.

Security Deposit

I allow the landlord to retain the tenant's security and pet deposits plus interest in partial satisfaction of the monetary Order issued. Over the period no interest is payable.

Filing Fee

Since the landlord has been partially successful in this application, I allow the landlord to recover the filing fee for this application from the tenant.

Conclusion

I issue the landlord a monetary Order for the landlord's loss incurred during this tenancy in the following terms:

Item	Amount
Monetary Award for Loss of Rent	\$1,803.23
Less Security and Pet Deposits	-650.00
Filing Fee	50.00
Total Monetary Order	\$1,203.23

I allow the landlord to retain the tenant's security and pet deposits and to recover the filing fee for this application from the tenant.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.