

## **DECISION**

Dispute Codes      MND, FF

### Introduction

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

- a monetary order for damage to the unit, site or property pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord's agent and the tenant attended the hearing. The tenant confirmed that she received the landlord's application for dispute resolution by registered mail shortly after it was mailed to her by the landlord on June 2, 2010.

The landlord's agent requested an adjournment because the landlord had called him earlier in the day to report that he could not participate in the hearing because he was suffering from stomach flu. He said that the landlord had been planning to attend at his office with the contractor who worked on the rental premises and connect with the hearing from that location.

### Issues(s) to be Decided

Should the request of the landlord's agent for an adjournment be approved? If not, is the landlord entitled to a monetary Order for damage to the rental unit? If not, is the landlord entitled to recover his filing fee from the tenant?

### Background and Evidence - Adjournment Request

The landlord's agent testified that the landlord had planned to participate in this hearing with his contractor, but the landlord could not participate because he had stomach flu that day. He confirmed that neither he nor the landlord had submitted written evidence beyond the three sentences included in the landlord's application for dispute resolution.

The landlord's agent said that the landlord planned to provide all of his evidence by way of oral testimony and that the landlord's contractor planned to do the same.

Analysis- Adjournment Request

Rule 6 of the Residential Tenancy Branch Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Since the landlord's inability to attend could not have been foreseen and the tenant was interested in proceeding with the hearing, the following portion of Rule 6.2(b) applies:

*...the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the Dispute Resolution Officer to reschedule the dispute resolution proceeding by:*

*...b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the Dispute Resolution Officer to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. I note that the landlord submitted his application for dispute resolution on June 1, 2010, identifying his representative who appeared at this hearing as his agent at that time. The hearing date and time were scheduled on June 2, 2010, over four months in advance of this hearing. During that period, neither the landlord nor his authorized agent submitted any written evidence. The landlord's agent testified that the landlord did not ask for nor conduct joint move-in or move-out condition inspections or prepare any condition inspection reports for this tenancy. The landlord's agent said that the landlord had no photographs of the condition of the rental premises either before or after this tenancy. The landlord's agent also said that the contractor had not issued any receipt for work conducted on the rental premises.

Under these circumstances, it appeared to me that the landlord and his agent had ample opportunity prior to the hearing to present any written evidence they had in order to obtain the monetary Order for damage the landlord was seeking. While it was unfortunate that the landlord could not attend the hearing because of illness, the person identified as the landlord's agent on the landlord's original application was present, but had little evidence to offer. The landlord's agent did not provide a satisfactory explanation as to the evidence the landlord planned to submit that would have had an impact on the outcome of this hearing. At the hearing, I decided that the landlord's agent had not met the criteria established for granting an adjournment and proceeded with this hearing.

#### Background and Evidence - Application for Monetary Order

The sole evidence presented by the landlord and his agent was as follows in his original application for dispute resolution.

*The Landlord claims damages against the Tenant for the cost of repairs in the amount of \$1,500.00 to the premise at XX. The Tenant left the walls of the premises in a damaged condition when the Tenant moved out of the premises in or about December 31, 2008 at the end of the tenancy. The damages were repaired by the Landlord at his own cost.*

The landlord's agent testified that the landlord had obtained repairs from a contractor, but the contractor had not issued a receipt at the time of this work. He offered no other evidence regarding the landlord's application.

#### Analysis – Application for Monetary Order

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, in this case the landlord, 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.

The landlord's application does not meet the standard of proof required for a monetary Order for damage caused by the tenant. The landlord did not provide any proof of a signed move-in or move out condition inspection report, any before and after photographs of the rental premises, or any receipts for the work conducted. The landlord's application provided no evidence that any damage to the rental premises occurred during this tenancy. I dismiss the landlord's application for a monetary Order for damage caused by the tenant to the rental premises.

Since the landlord's application was unsuccessful, he is not entitled to recover his filing fee from the tenant.

### Conclusion

I deny the request from the landlord's agent for an adjournment of this hearing. I dismiss the landlord's application for dispute resolution. I dismiss the landlord's application to recover his filing fees from the tenant.

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*.