

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF, O

### 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 damage to the unit, site or property 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 her 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 her application for dispute resolution hearing package by registered mail on September 20, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served the application for dispute resolution to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord said that the tenant has not vacated the rental premises and has not returned her keys to the landlord by September 15, 2010, the date indicated on the tenant's August 13, 2010 notice to end this tenancy. The landlord said that the tenant's son appears to be continuing to live in the rental premises. The landlord said that at the time she filed for dispute resolution, she anticipated she would have access to the rental premises and would be able to provide an accurate inventory of the damage caused during this tenancy. As the tenant has not given the landlord vacant and quiet possession of the rental premises by the date indicated on her notice to end tenancy, the landlord was not in a position to pursue her claim for damage caused during this tenancy. Consequently, I dismiss the landlord's application for a monetary Order for damage arising out of this tenancy with leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

The landlord entered written evidence that this one-year fixed term tenancy commenced on July 1, 2010. The fixed term was to expire on June 30, 2011. Monthly rent is set at \$1,730.00, payable on the first of each month. The landlord continues to hold the \$865.00 security deposit paid for this tenancy.

The landlord entered written evidence of the tenant's notice to end tenancy by September 15, 2010. The landlord testified that she received only \$565.00 of the September 2010 rent. As the tenant has not returned the keys or given vacant and quiet possession of the rental unit, the landlord has been unable to re-rent the premises. She has received no rental payments for this rental unit for October 2010.

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.

In this case, I accept the landlord's undisputed evidence that there is outstanding rent of \$1,165.00 for September 2010 and I include this amount in a monetary Order in the landlord's favour. Since this is a fixed term tenancy, I find that the tenant is also responsible for unpaid rent of \$1,730.00 for October 2010 and include this in the monetary Order. I make this finding because I accept the landlord's testimony that the tenant has not returned the keys or ensured that the premises have been vacated so that the landlord can try to re-rent the premises.

I authorize the landlord to retain the security deposit held for this tenancy in partial satisfaction of the landlord's monetary award.

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

### Conclusion

I issue the landlord a monetary Order in the following terms which allows the landlord to recover unpaid rent, loss for October 2010 resulting from this tenancy, and her filing fee for this application.

<b>Item</b>	<b>Amount</b>
Unpaid September 2010 Rent	\$1,165.00
Unpaid October 2010 Rent	1,730.00
Less Security Deposit	-865.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,080.00</b>

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*.