

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

They testified, through their son who assisted with translating, that they sent the tenant a copy of their application for dispute resolution hearing package by registered mail on June 21, 2010. They entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. They said that the package was returned to them as the tenant has moved. I am satisfied that the landlords have served the application for dispute resolution to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities, damage to the rental premises, and losses arising out of this tenancy? Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested by the landlords? Are the landlords entitled to recover their filing fee for their application from the tenant?

### Background and Evidence

The landlords entered a copy of the one-year fixed term tenancy agreement into written evidence. This tenancy commenced on June 1, 2009, with a scheduled end date to the tenancy set at May 31, 2010. The tenant was to pay \$1,000.00 per month on the first of each month plus the hydro bill for this property, as the landlords said that this was the sole residence on this property. The landlords said that they retained the tenant's \$500.00 security deposit paid on May 24, 2009.

The landlords testified that the tenant abandoned the rental premises before the expiry of her fixed term tenancy. Although they were uncertain as to when the tenant vacated the rental unit, they said that they gained access to the rental unit on March 4, 2010. They said that they did not attempt to re-rent these premises after the tenant left. They said that they occupied the premises themselves in July 2010.

The landlords applied for a monetary award of \$7,150.15, which they itemized as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent & Loss of Rent June 1, 2009 to May 31, 2010 (6 months at \$1,000.00)	\$6,000.00
Unpaid Utilities June 1, 2009 to May 12, 2010 (\$421.79 + \$28.36 = \$450.15)	450.15
Fine from Re/Max property management for having a dog in the Rental Unit	200.00
Damage to Glass Windows in Dining Room	300.00
Cleaning and Removal of Garbage	100.00
Replacement of Keys	100.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award Requested</b>	<b>\$7,200.15</b>

They also applied for authorization to retain the tenant's security deposit to partially offset the monetary award they requested.

## Analysis

### Application for Recovery of Unpaid Rent and Utilities & Loss of Rent

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.

The landlords presented undisputed testimony that the parties entered into a fixed term tenancy agreement that was scheduled to end on May 31, 2010. However, the tenant made irregular rent payments, and paid \$6,000.00 in total rent for this tenancy. The landlords presented written evidence that the tenant's final rent payment for rent owing for November 2009 was not paid until December 2, 2009. The landlords testified that the tenancy ended on March 4, 2010 when they realized that the tenant had vacated the rental unit.

Section 45(2) of the *Act* deals with a tenant's notice in the case of a fixed term tenancy:

**45 (2)** *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

***(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and***

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement...*

(emphasis added)

No evidence was presented to indicate that there was a written agreement between the parties to end this tenancy prior to the end of its fixed term. I therefore find that the tenant vacated the rental unit contrary to section 45 of the *Act*.

I find further that the evidence shows that as a result of the tenant's actions, the landlords suffered a rental loss for the months of December 2009, January 2010, February 2010 and March 2010. The landlords testified that they made no efforts to re-rent the rental unit and, in this way, mitigate the tenant's responsibility for the landlords' lost rent for April and May 2010, the remaining months of the fixed term tenancy. Since I am not satisfied that the landlords made an effort to mitigate the tenant's losses for the final two months of the fixed term tenancy, I make no monetary award for these months.

I also find that the landlords assumed responsibility for BC Hydro bills stemming from this tenancy. I therefore find that the landlords are entitled to recovery of the BC Hydro billings totalling \$450.15.

#### Application for Damage & Loss Arising from this Tenancy & Remaining Issues

The landlords testified that they did not conduct joint move-in or move-out condition inspections of the rental premises. They did not conduct these inspections themselves, nor did they issue an inspection report to provide to the tenant. Although they provided copies of photographs of the condition of the premises after the tenant left, they submitted no receipts of any expenses they incurred following this tenancy. They testified that the damage to the broken window happened during this tenancy, but said that they have not yet repaired the damage. They said that they cleaned the premises and removed the garbage after the tenant left the premises.

I allow the landlords a monetary award of \$50.00 for cleaning costs and removal of garbage from the rental premises, as I accept that the tenant did not clean the premises properly when she ended this tenancy, and that there should be some monetary award to the landlords for this item. The landlords have not met the burden of proof required to allow me to make any further monetary award for loss or damage resulting from this

tenancy, and I dismiss their claim for the remainder of the items cited in their application with the exceptions outlined below.

I authorize the landlords to retain the tenant's security deposit plus interest in partial satisfaction of their monetary award. No interest is payable over this period. I allow the landlords to recover their filing fees from the tenant.

### Conclusion

I grant a monetary Order of \$4,100.15 in the landlord's favour in the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent –December 2009, January 2010, February 2010 & March 2010 (4 months at \$1,000.00 = \$4,000.00)	\$4,000.00
Unpaid Utilities June 1, 2009 to May 12, 2010 (\$421.79 + \$28.36 = \$450.15)	450.15
Cleaning and Removal of Garbage	50.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$4,100.15</b>

I allow the landlords to keep the tenant's security deposit.

The landlords are 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*.