

## **DECISION**

Dispute Codes      MND, MNR, MNSD, 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 damage to the unit 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 hearing package by registered mail on June 30, 2010. She provided a Canada Post Tracking Number to confirm this mailing. She testified that she sent another copy of an amended version of this package on November 2, 2010 by registered mail, again providing the Canada Post Tracking Number. The only change in the amended application was to provide the correct suite number for the rental premises. I am satisfied that the landlord has served the application for dispute resolution to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage to the rental unit? Is the landlord allowed to retain all or a portion of the tenant's security deposit? Is the landlord allowed to recover the filing fee for this application from the tenant?

### Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2009. Monthly rent was set at \$700.00, payable on the first of each month. The landlord testified that she continues to hold the tenant's \$350.00 security deposit plus interest.

The landlord entered written evidence of the tenant's May 29, 2010 notice to end this tenancy by June 30, 2010, prior to the scheduled end of the fixed term tenancy on September 30, 2010. The landlord testified that the tenant vacated the rental unit by June 15, 2010. The landlord provided written evidence regarding the joint move-in condition inspection and inspection report of September 30, 2009. The landlord's building manager testified that she offered two scheduled times to the tenant to conduct a joint move-out inspection. When the tenant declined to participate in the move-out condition inspection, the building manager conducted this inspection herself and prepared a move-out condition inspection report on June 15, 2010, entered into evidence.

At the hearing, the landlord revised her application for a monetary award of \$889.32 as follows to reflect the receipts and invoices she had submitted:

<b>Item</b>	<b>Amount</b>
Unpaid June 2010 Rent Arising from this tenancy	\$206.67
Liquidated Damages	400.00
Hauling	36.00
Carpet Cleaning	73.45
Drape Cleaning	45.00
Suite Cleaning	127.50
<b>Total Monetary Award Requested</b>	<b>\$888.62</b>

She also asked for authorization to keep the tenant's security deposit plus interest and to recover the filing fee for her application from the tenant.

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 allow the landlord's claim for \$206.67 in unpaid rent which she testified resulted from the difference between what the tenant paid for June 2010 rent and what the landlord would have been able to obtain for this month through this fixed term tenancy. The landlord testified that she mitigated the tenant's losses for the remaining months of this fixed term tenancy by re-renting the rental premises promptly to another tenant for July 2010. The landlord's actions in doing so complied with the requirement of section 7(2) of the *Act* to mitigate the tenant's losses for the remainder of this tenancy.

I allow the landlord's claim for hauling, carpet cleaning, drape cleaning and general suite cleaning as requested by the landlord. I make a monetary award to that effect. I am satisfied that the landlord has complied with the requirements of the *Act* in documenting the damage arising from this tenancy and the expenses incurred by the landlord to restore the rental unit to its previous condition.

I make no monetary award for liquidated damages as this claim does not fall within any of the categories identified in the landlord's application for dispute resolution. Specifically, the landlord's application for a monetary Order for this item does not qualify as unpaid rent or utilities or for damage to the unit, site or property.

I allow the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable over this period. As 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 a monetary Order in the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid June 2010 Rent Arising from this tenancy	\$206.67
Hauling	36.00
Carpet Cleaning	73.45
Drape Cleaning	45.00
Suite Cleaning	127.50
Less Security Deposit	-350.00
Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$188.62</b>

I allow the landlord to retain the tenant's security deposit 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*.