

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security - Section 38
3. A monetary Order for loss of revenue due to damage – Section 67
4. A Monetary Order for Damages to the rental unit – section 67
5. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on June 01, 2010 and ended August 23, 2010 subsequent to a Notice to End for non payment of rent dated August 02, 2010. Rent in the amount of \$1300 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650 which the landlord holds. The tenant failed to pay rent in the month of August 2010,

and the landlord served the tenant with a notice to end tenancy for non-payment of rent. The landlord seeks the unpaid rent in the amount of \$1300.

The landlord claims that the tenant caused damage to the rental unit prior to vacating the unit, and that as a consequence of the damage and that the tenant did not clean the unit and left an abundance of refuse, the landlord was not able to re-rent the unit for the month of September 2010.

The landlord is claiming compensation totalling \$5000, although not all of which is supported by evidence. The landlord itemized the following:

cleaning costs -	\$187 (invoice) and \$280 (own labour at 8 hrs. X \$35 /hour).
rubbish removal total	\$428 ( estimates for \$302)
gardening	(inclusive)
carpet cleaning	\$199 ( invoice for materials only of \$105)
Wall damage	\$385 (invoices for materials only)
Chimney sweeping	\$85 (invoice)
Ferry / transportation costs	\$264(invoices)
Grease filter	\$19 (invoice)
Missing 'dolly'	0
Missing wheelbarrow	0

Loss of revenue for September 2010  
due to damage / remediation of unit. \$1300.

### **Analysis**

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. Based on the above I find that the landlord is entitled to unpaid rent in the amount of **\$1300**.

On preponderance of the evidence before me, I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the

landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The landlord has claimed for damages.

I have considered all of the evidence and testimony and find that the landlord provided invoices and written estimates for some of their claims. The landlord is permitted to claim a reasonable amount for their own labour – which I set at \$25 per hour. With this in mind I find the landlord are entitled to a monetary award for only the following items below. As mentioned above the landlord has the burden of proof to determine the actual value of their claims. As the landlord has been unable to satisfy this burden of proof for some of their claims, the items not listed are **dismissed** without leave to reapply.

cleaning costs -	<b>\$387</b>
rubbish removal total	<b>\$302</b>
gardening	(inclusive)
carpet cleaning	<b>\$105</b>
Wall damage	<b>\$120</b> (materials / global)
Chimney sweeping	<b>\$85</b>
Grease filter	<b>\$19</b>

I am satisfied that as a result of the required remediation to the rental unit, the landlord was not able to re-rent the rental unit for the month of September 2010. As a result, I grant the landlord loss of revenue for September in the amount of **\$1300**.

As the landlord has been sufficiently successful with their application I find they are entitled to recover the **\$50** filing fee from the tenant.

The quantum of the landlord's monetary award is the sum of **\$3668**. The security deposit will be off-set from the award made herein.

### **Conclusion**

**I order** that the landlord retain the security deposit of **\$650** in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$3018**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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*.