



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, a Monetary Order for damage to the rental unit, site or property and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 11, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on September 16, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?

## Background and Evidence

The landlord testifies that this was a fixed term tenancy which started on October 01, 2009 and was due to expire on September 30, 2010. The rent for this unit was \$925.00 per month and was due on the first of each month. The tenant paid a security deposit of \$462.00 on September 19, 2009.

The landlord states the tenant gave notice to end the tenancy before the end of the fixed term. The tenant moved from the rental unit on June 30, 2010. At the move out condition inspection the landlord testifies that the tenant agreed in writing that the landlord could deduct the sums of \$250.00 in liquidated damages as the tenancy had ended before the end of the fixed term and \$50.00 in unpaid rent. The landlord testifies that the balance of \$162.00 was returned to the tenant to the address given as his forwarding address.

The landlord states that the unit was re-rented for July 15, 2010 and he seeks to recover the sum of \$462.50 from the tenant in loss of rent from July 01 to July 15, 2010.

The landlord testifies that after the tenant moved out he had to do some additional painting and dry wall repairs in the unit which came to a total sum of \$336.00 and seeks to recover this cost from the tenant.

## Analysis

With regards to the landlords claim for loss of rent; Policy Guideline #3 – claims for rent and damages for loss of rent states the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the

earliest time the tenant could have legally ended the tenancy. As the tenant ended the tenancy on June 30, 2010 and the landlord was not able to re-rent the unit until July 15, 2010 the landlord is entitled to recover the loss of rent up to July 15, 2010 to the sum of **\$462.50** pursuant to section 67 of the *Act*.

With regards to the landlords claim for damages to the rental unit; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this matter I find the landlord has provided no evidence to support this section of his claim. He has not provided any evidence to show that the damage exists or that it was caused by the tenant during the tenancy. The landlord has not provided verification of the actual costs to rectify the alleged damage. Consequently, this section of the landlords claim is dismissed.

As the landlord has been partial successful with his claim I find he is entitled to recover his **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the sum of **\$512.50**.

## Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$512.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.



## Dispute Resolution Services

Page: 4

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The remainder of the landlords' application is dismissed without leave to reapply.

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*.

Dated: January 05, 2011.

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Residential Tenancy Branch