

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 10 Day Notice for Unpaid Rent on January 4, 2011. The landlord testified that he handed the tenant a copy of his dispute resolution hearing package on January 10, 2011. The tenant confirmed receiving both of these documents. I am satisfied that these documents were served in accordance with the *Act*.

At the commencement of the hearing, the parties said that the tenant vacated the rental premises on January 13, 2010. The landlord withdrew his application for an Order of Possession, so I have not considered that portion of his application.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award 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 award requested? Is the landlord entitled to recover his filing fee for this application from the tenant?

### Background and Evidence

This fixed term tenancy began on April 15, 2010 and was scheduled to end on April 14, 2011. Monthly rent was set at \$995.00, payable on the first of each month. The landlord continues to hold the tenant's April 15, 2010 security deposit, paid on April 15, 2010.

Although the landlord testified that he had a joint move-in condition inspection report, he did not submit this report into written evidence. The landlord said that he did not request a joint move-out condition inspection with the tenant, nor was one conducted. He said that he did not prepare a move-out condition inspection report.

The parties agreed that the tenant gave written notice to the landlord in December 2010 that she would need to vacate the rental unit at the end of January 2011 because she could no longer afford to pay the rent. The tenant did not pay the rent due on January 1, 2011, and paid no portion of the January 2011 rent owing for this tenancy.

The landlord applied for a total monetary award of \$1,492.00. Of this amount, he applied for unpaid rent of \$995.00 for January 2011. He also applied for permission to retain the tenant's \$497.00 security deposit to assist him with cleaning and readying the rental unit for re-rental. He submitted no photographs, bills, invoices, estimates or any other documentation to support his request for a monetary award for damage or loss arising out of this tenancy. He did not submit a copy of the Residential Tenancy Agreement identifying specific charges to be applied if the tenant did not attend to certain provisions of that Agreement (e.g., carpet cleaning).

### 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.

There is undisputed evidence that the tenant did not pay her January 2011 rent. I find that the tenant is in breach of her fixed term tenancy agreement because she did not pay rent that was due for January 2011 as specified in that agreement.

Pursuant to section 7(1) of the *Act*, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of her tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

At one point in the hearing, the landlord testified that he made no attempt to re-rent this rental unit to another tenant during January 2011. He said that the premises needed to be cleaned and were not in condition to rent to another tenant. Later in the hearing, he said that he had an ongoing general advertisement on two websites used in the past to rent suites in this 28-unit building. Although the ongoing advertisement was not for this specific rental unit, he maintained that the suite could have been made available for rent

for part of January 2011 had someone responded to his ongoing general rental advertisement.

Based on the evidence presented, I accept that the landlord has made some attempts to rent the premises to another tenant and that it would likely be difficult to obtain a new tenant during the middle of January after the tenant vacated the rental unit on January 13, 2011. As such and given that the tenant signed a fixed term tenancy agreement, I am satisfied that the landlord has discharged his duty to the extent that is reasonable to minimize the tenants' loss under section 7(2) of the *Act*. I am satisfied that the landlord is entitled to a monetary award for unpaid rent for January 2011.

Although the landlord attempted to claim a monetary award for damage or loss arising from the tenant's failure to leave the rental unit in satisfactory condition at the end of her tenancy, the landlord did not submit sufficient evidence to entitle him to this type of award. He did not supply any written or photographic evidence, did not attempt to conduct a joint move-out condition inspection, and provided no evidence of receipts, invoices, estimates, etc., to support his request for this monetary award. As the landlord has not met the burden of proof required to entitle him to a monetary award to offset the damage allegedly caused by the tenant, I dismiss the landlord's request for an additional monetary award beyond the unpaid rent awarded for January 2011.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued.

Since the landlord has been successful in his application, I allow him to recover his filing fee from the tenant.

#### Conclusion

I issue a monetary Order in the following terms which compensates the landlord for unpaid rent for January 2011, allows him to recover his filing fee, and enables him to retain the tenant's security deposit.

Item	Amount
Unpaid January 2011 Rent	\$995.00
Less Security Deposit	-497.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$548.00</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*.