

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC,

### 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, for damage to the rental unit, 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.

The landlord also asked for authorization to recover his filing fee for his application from the tenant pursuant to section 72 and for permission to apply the proceeds of the sale of abandoned goods to the monetary award requested pursuant to section 26 of the *Residential Tenancy Regulation* (the *Regulation*) enacted under the *Act*. I accepted the landlord's request to insert the relevant dispute codes on his application to reflect these two written requests in the narrative of his application.

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. The landlord provided written evidence that he posted a witnessed 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on September 8, 2010. He testified that he sent the tenant his dispute resolution hearing package on December 31, 2010 by registered mail. He provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the commencement of the hearing, the landlord said that the tenant abandoned the rental unit by September 2, 2010, when he and his wife returned from a two-month holiday. He said that he no longer required an Order of Possession. He said that he does not have a forwarding address for the tenant. I have not considered the landlord's application for an Order of Possession which was apparently submitted in error as the landlord believed that this Order would allow him to dispose of personal property the tenant had left behind when she abandoned the suite.

During the hearing, the landlord testified that he continues to hold some of the tenant's personal property. The landlord has not incurred any costs beyond what he has claimed for elsewhere in his claim to remove and store these belongings on this five acre property. Since there are no proceeds from a sale of this abandoned personal

property to take into consideration, there is no issue before me in this application under either the *Act* or Part 5 of the *Residential Tenancy Regulation*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and loss of rent? Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? Is the landlord entitled to retain 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

The landlord testified that this tenancy commenced initially as a one-year fixed term tenancy on October 1, 2005. By 2010, the tenancy had continued on a month-to-month basis. Monthly rent by 2010 was set at \$685.00, payable on the first of each month. The landlord said that he continues to hold the tenant's \$300.00 security deposit paid on September 12, 2005.

The landlord provided a copy of the condition inspection report. The move-in condition inspection occurred on September 23, 2005. He said that he did not obtain the tenant's signature for this inspection because it was a new rental unit and was in good condition at that time. The landlord's move-out inspection was conducted without the tenant on September 14, 2010, after the tenant abandoned the rental unit. The move-out condition inspection report identified many problems with the condition of the rental unit. The landlord submitted into evidence copies of photographs taken after the end of this tenancy. He testified that these photos accurately showed that the tenant left many of her belongings and debris in the rental unit when she left.

The landlord applied for a monetary award of \$3,350.00. Of this amount, \$2,055.00 was for unpaid rent for the months of July, August and September 2010. The landlord's original application sought awards of \$360.00 for cleaning and \$375.00 for the pick-up and hauling of the contents of the tenant's suite when the tenant abandoned the unit in the summer of 2010. The landlord also sought the return of his filing fee for this application from the tenant.

In the landlord's December 31, 2010 evidence package, the landlord provided a "Tally Sheet" which included his "Hours Worked on Clean Up and Repair" and "Estimates for Repairs and Painting. In this Tally Sheet, the landlord identified the details regarding his cleaning and repairing of the rental premises from September 14, 2010 until December 7, 2010. He totalled these repairs/cleaning/disposal charges as 28.5 hours at a rate of \$22.50 per hour. This resulted in a claim for a monetary award of \$641.25

for these items. To this figure, he added the estimated cost to paint this suite, which he calculated as \$1,280.00. He testified that this painting has not yet occurred. He also added his estimate of taxes of \$230.55, for a total of \$2,382.35 on his Tally Sheet.

The landlord also submitted a copy of a \$21.05 payment made to a landfill site where he took some of the garbage left at the rental premises and a \$23.75 receipt for transportation to attend to the cleanup of this matter.

### 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.

In this case, I am satisfied by the landlord's undisputed evidence that he incurred losses resulting from the tenant's non-payment of rent for July, August and September 2010. I allow the landlord a monetary award of \$685.00 for each of these months.

Based on the undisputed evidence and testimony from the landlord, I am satisfied that the landlord has incurred losses and damage resulting from this tenancy. I allow the landlord's claim for cleanings costs in the amount of \$641.25 as submitted in his Tally Sheet. I also allow the landlord a monetary award in the amount of \$21.05 for the fee he paid to the landfill site and the \$23.75 for transportation costs the landlord submitted.

I accept the landlord's testimony that the damage to the rental unit that requires repainting exceeds the normal wear and tear that would be expected over the course of a five-year tenancy. However, I am not satisfied that the landlord has met the burden of proof required by section 67 of the *Act* to enable me to make a monetary award for all of his estimated cost of repainting this rental suite. I allow only that portion of the landlord's estimated repainting costs that would exceed what would normally be required after the end of a five-year tenancy. In this case, I allow the landlord a monetary award of \$500.00 for repainting the premises.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued. Interest of \$10.62 is added to the tenant's \$300.00 security deposit from September 12, 2005 until the date of this decision.

Since the landlord has been successful in this application, I allow him to recover his \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord's claim for unpaid rent and losses arising out of this tenancy.

<b>Item</b>	<b>Amount</b>
Unpaid July 2010 Rent	\$685.00
Unpaid August 2010 Rent	685.00
Unpaid or Lost September 2010 Rent	685.00
Cleaning and Repair Costs	641.25
Repainting	500.00
Landfill Fee	21.05
Transportation Cost	23.75
Less Security Deposit Plus Interest (\$300.00 + \$10.62 = \$310.62)	-310.62
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,980.43</b>

This decision allows the landlord to recover his filing fee for this application and to retain the tenant's security deposit in partial satisfaction of the monetary award.

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*.