

DECISION

Dispute Codes MND, MNR, 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; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:38 a.m. in order to enable the tenant to connect with 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 testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on November 25, 2010. He provided a copy of the Canada Post Tracking Number for this mailing and testified that Canada Post records indicate that the package was received by the tenant on November 29, 2010. I am satisfied that the landlord served this package in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage arising out of this tenancy? Is the landlord entitled to recover his filing fee for this application?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on June 26, 2009. A second one-year fixed term was established on July 1, 2010, which was to expire on June 30, 2011. Monthly rent was set at \$1,500.00, payable on the first of each month. The landlord testified that he continues to hold the tenant's \$775.00 security deposit paid on or about June 26, 2009. He testified that the rental unit was a new apartment created a few months before this tenancy commenced.

The landlord entered into written evidence a copy of the joint move-in condition inspection report, signed by both parties on June 26, 2009. The landlord testified that he completed the remainder of the condition inspection report on October 28, 2010, the date when the tenant vacated the rental unit. The landlord said that he attempted to arrange a joint move-out condition inspection with the tenant at the end of this tenancy. He said that the tenant refused to participate in a joint move-out condition inspection

and left the rental premises without giving proper notice and without leaving her forwarding address. The landlord said that there was considerable damage to the rental unit. He entered photographic evidence taken at the time of his move-out condition inspection. He requested a monetary award to replace the carpet in the rental unit because the tenant had not complied with the “no pets” clause of the tenancy agreement by keeping a snake in an aquarium/terrarium in one of the bedrooms. The landlord said that he forwarded his move-out condition inspection report to the tenant once he obtained her forwarding address.

The landlord attached a copy of his summary of an itemized account of his application for a \$13,525.00 monetary award for the following items.

Item	Amount
Penalty of One Month's Prior Notice	\$1,500.00
Unpaid October 2010 Rent	1,500.00
Carpet Replacement because of Pet Snake	4,000.00
Damaged Wood Floor and Base Board	2,500.00
Mudding/Grinding/Painting of Wall & Door	2,000.00
Window Blind Broken	450.00
Washer Repair/Replacement	850.00
Unpaid December 2010 Rent	1,500.00
Less Security Deposit	-775.00
Total Monetary Award Requested	\$13,525.00

At the hearing, the landlord asked for an additional \$200.00 for an elevator fee that the tenant did not pay when she left the rental unit. The landlord also applied for recovery of his \$100.00 filing fee for this application.

The landlord testified that he was unable to re-rent the premises until January 15, 2011, because he had to undertake major repairs to the premises to restore it to its previous condition. He said that the new tenant rented the premises for \$1,550.00 per month. He testified that the required repairs took over a month to complete and that he encountered difficulty in getting repair people to undertake this work. He provided no receipts for the work conducted, but entered into written evidence one estimate for the carpet replacement. The landlord testified that the work was completed by January 5, 2011 and that he commenced trying to re-rent this unit in a Korean language community newspaper in mid-November 2010.

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.

The landlord testified that the last monthly rental payment he received from the tenant was for September 2010. Based on the undisputed evidence submitted by the landlord and pursuant to section 7(1) of the *Act*, I find that the tenant did not comply with the terms of her fixed term tenancy agreement by leaving prior to the expiry of her fixed term tenancy agreement. However, section 7(2) of the *Act* also requires the landlord to attempt to mitigate the tenant's losses. I am satisfied by the landlord's evidence that he did try to mitigate these losses by advertising the rental unit in a community newspaper. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I issue a monetary award in the landlord's favour for the landlord's loss of rental income from October 2010 until January 15, 2011, an amount of \$5,250.00 in total. I reduce this amount by the additional \$50.00 monthly rental that the landlord said he expects to receive as per the terms of his new tenancy agreement. This reduction of \$275.00 applies to 5 ½ months from January 15, 2011 until June 30, 2011, the end date for the tenant's fixed term tenancy.

Although I have given the landlord's claim for replacement of the carpets thorough consideration, I am not satisfied by the photographic, written or oral testimony that there was damage to the carpets that required their replacement. I reject the landlord's claim that he is entitled to replacement of the carpets because the tenant breached the no pet clause. He provided insufficient evidence to demonstrate that the mere presence of a pet snake in an enclosed cage or terrarium required replacement of the carpeting. Other than an estimate for higher quality carpet than existed prior to this tenancy, the landlord provided no receipts or invoices for this expenditure. I dismiss the landlord's claim for new carpeting in this rental unit.

The landlord's photographs and condition inspection report demonstrate some eligibility for consideration of damage or losses arising out of this tenancy. However, as outlined above, the landlord also needs to provide evidence that can verify the actual monetary amount of the loss or damage. He has not done so and has offered no receipts or

invoices, nor has he produced photographs to show that the work he claims to have undertaken was ever done. Under these circumstances, I am unable to issue a monetary award of \$5,800.00 for the fourth through the seventh items listed in the above table. However, as I do accept that there was some damage arising out of this tenancy that required repair, I allow a monetary award of \$300.00 which would seem appropriate given the photographic oral and written evidence presented by the landlord.

The landlord testified that he continues to hold the tenant's security deposit of \$775.00 plus interest from June 26, 2009 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. I dismiss all other elements of the landlord's claim for a monetary award without leave to reapply.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover rent that was not paid during this tenancy, his filing fee for this application and for damage arising out of this tenancy.

Item	Amount
Unpaid Rent (October 1, 2010 – January 15, 2011) 3 ½ months @ \$1,500.00 = \$5,250.00)	\$5,250.00
Less Additional Rent Received by Landlord (January 15, 2011 – June 30, 2011) 5 ½ months @ \$50.00 = \$275.00)	-275.00
Damage Arising from Tenancy	300.00
Less Security Deposit	-775.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$4,600.00

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

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*.