

## **Decision**

### **Dispute Codes:**

OPC, MNDC, MNR, MNSD, MND, FF

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated May 31, 2011 and a claim for damages to the suite.

Despite being served by registered mail sent on July 21, 2011, the respondent tenant did not appear.

At the outset of the hearing, the landlord advised that the tenant had since vacated the unit and therefore an Order of Possession was no longer being sought.

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

The remaining issue to be determined on the landlord's application whether the landlord is entitled to monetary compensation for damages to the suite.

### **Background and Evidence Notice to End Tenancy**

The tenancy began on November 1, 2011 with rent of \$1,300.00. A security deposit of \$650.00 was paid.

The landlord testified that on May 31, 2011 he had issued the one month notice for cause and on July 18, 2011 made an application seeking an Order of Possession to enforce the Notice. The landlord testified that he also included a monetary claim for damages in anticipation that the tenant would not repair the damage evident in the suite. The claim is for \$3,275.00. No evidence was submitted with respect to the damage claim.

### **Analysis**

It is important to note that in a claim for damage or loss under the Act, the burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 32 of the Act states that a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant but is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that, at the time this landlord made the application, the tenancy was still in place and the landlord could not have obtained the necessary evidence to support a damage claim. Moreover, a tenant is entitled to be given the opportunity at the end of the tenancy to rectify the damage. I find that, on July 18, 2011, when the landlord made the the application for an Order of Possession based on the One-Month Notice to End Tenancy for Cause it was premature at that time for the landlord to make a claim for damages to the suite.

Accordingly, I decline to consider the landlord's monetary claim for damages with this application now before me.

### **Conclusion**

Based on evidence and testimony I find that the request for an Order of Possession is moot as the tenant has vacated the unit.

Based on evidence and testimony, I hereby dismiss the portion of the landlord's application relating to the monetary claim for damages, with leave to reapply.

I find that the landlord is entitled to be reimbursed the \$50.00 cost of filing this application and I order that the landlord retain this amount from the tenant's security deposit of \$650.00 leaving \$600.00 still held in trust for the tenant which must be administered in accordance with section 38 of the Act.

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: August 16, 2011.

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Residential Tenancy Branch