

## **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 1:23 p.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 handed the tenant a copy of his dispute resolution hearing package on July 4, 2011 at 7:00 p.m. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

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

### Background and Evidence

This periodic tenancy commenced on March 16, 2011. The landlord said that the rental unit in a strata property was three years old and in very good condition when the tenancy commenced. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. The landlord testified that the tenant paid \$500.00 in rent for the remainder of March 2011, but did not pay any further rent for this tenancy.

The landlord testified that he obtained an earlier monetary Order for \$2,600.00 and an Order of Possession. He said that the earlier monetary Order was for unpaid rent for April and May 2011. He testified that he was able to obtain vacant possession of the rental premises with the assistance of a bailiff on May 27, 2011.

The landlord applied for a monetary award of \$14,830.83 for damage arising during this tenancy and for unpaid rent. The landlord provided the following summary of this claim:

<b>Item</b>	<b>Amount</b>
Deductible Payment to Strata Corporation to Repair Damage from garberator and leakage from tenant's kitchen sink	\$10,000.00
Repairs to Leaking Toilet	181.44
Repairs to Disabled Fire Alarm #1	78.40
Repairs to Disabled Fire Alarm #2	142.40
Vandalism Fire Alarm	616.00
Reimbursement of Bailiff's Cost to Remove Tenants	1,500.00
Carpet Cleaning	59.71
Doors and Handles for Inside	112.00
Doors and Handles for Inside	31.36
Paint Supplies #1	131.88
Paint Supplies #2	60.96
Painter Labour	400.00
Loss of June 2011 Rent	1,000.00
Loss of July 2011 Rent	1,000.00
Recovery of Filing Fee for this application	100.00

The landlord testified that the rental unit was in poor condition when the tenant vacated the rental unit, requiring considerable repairs that were not completed until the end of July 2011. He requested recovery of his loss of rent for June and July 2011, as he was unable to rent the premises to another tenant during that period because of the ongoing work required to repair the rental unit after this tenancy ended.

The landlord also testified that major repair work was required to the hardwood floor of the kitchen of the rental unit and the hardwood floors and walls of the rental unit beneath the tenant (the lower rental unit). He testified that there was major water damage resulting from the tenant's actions. He said that the tenant removed a pipe and garberator leading to major flooding in the lower rental unit. The landlord entered into written evidence a copy of a June 14, 2011 letter from the Property Agent for the Strata Council and an invoice for repairs. The Property Agent advised the landlord that the Strata Council was seeking recovery of the \$10,000.00 in the Strata Council's deductible portion of the costs for repairs due to the leak from the kitchen of the rental unit. The landlord said that the repairs to the two rental units exceeded the deductible portion of the Strata Council's insurance policy. The landlord said that he paid the Strata Council's invoice three weeks before this hearing by certified draft.

The landlord described each of the items submitted in his application. He testified that the painting costs were for two rooms of the rental unit which had holes in the drywall after this tenancy. He said that he received a quote for a full repainting of the rental unit of \$1,100.00, but he repainted only the two rooms at a cost of \$400.00 for labour.

### Analysis

Based on the undisputed evidence presented, I am satisfied that the landlord incurred losses to repair damage arising out of this tenancy.

I accept the landlord's testimony that he paid \$10,000.00 to the Strata Council for the Strata Council's portion of the repair work to this rental unit and the lower rental unit. I also accept the landlord's evidence that this payment resulted from damage caused by the tenant.

Residential Tenancy Policy Guideline #37 establishes that the normal useful life of hardwood floors is 20 years. The replacement of hardwood flooring in this rental unit and the lower rental unit occurred three years into the 20 year life span for these floors. As such, only 85% of the landlord's claim for replacement of the hardwood flooring would normally be allowed. However, the \$10,000.00 deductible payment to the Strata Council was not accompanied by an itemized invoice for the work conducted by the restoration company. Although a significant portion of this \$10,000.00 payment was no doubt directed to replacement of hardwood floors in both of the rental units, the landlord also testified that extensive work was conducted by the restoration company to dry out the lower rental unit and replace walls.

In arriving at a deduction for the remaining useful life of the flooring, I have estimated that approximately one half of the total cost of the restoration work was devoted to the replacement of the hardwood flooring. Of that \$5,000.00 cost, I find that the cost for replacing the hardwood flooring in the landlord's rental unit would be \$2,500.00, half of the overall total for this item. I find that the landlord is limited in his recovery of the flooring replacement costs in his rental unit to 85% of the \$2,500.00 flooring costs, \$2,125.00. This finding leads to a deduction of \$375.00 from the overall total of \$10,000.00 paid to the Strata Council for the deductible. For these reasons, I find that the landlord is entitled to an overall monetary award of \$9,625.00 for his payment of the \$10,000.00 to the Strata Council for the deductible paid to the insurance company.

In considering the landlord's application for reimbursement for painting expenses, I note that Residential Tenancy Policy Guideline #37 establishes that the normal useful life of interior painting to a rental unit is 4 years. The landlord testified that the rental unit is three years old and has not been painted since it was completed. As such, repainting of

the rental unit would have been anticipated the year after this tenancy ended. This reduces the amount of the landlord's total claim for painting (supplies and labour) from \$592.84 by  $\frac{3}{4}$  to \$148.21. However, I add \$100.00 to this amount based on the landlord's testimony that the repainting work involved patching and repairing holes to the walls caused by the tenants during this tenancy. I do so as I find that this type of damage exceeds reasonable wear and tear for a rental unit of this age. I find that the landlord is entitled to this additional \$100.00 claim for damage, resulting in a total award of \$248.21 for painting and painting supplies in the landlord's favour.

I have also carefully considered the landlord's request for reimbursement of lost rent for June and July 2011. The landlord entered undisputed oral and written evidence that he gained vacant possession of the rental premises on May 27, 2011. He testified that the work to repair the rental unit was not completed until the end of July 2011. He said that he has not attempted to re-rent the premises, but has instead listed this strata unit for sale. While I accept that the magnitude of the repairs and restoration work would have made it difficult to rent the premises for much of June 2011, I note that the Strata Property Agent for the Strata Council issued the request for payment of the deductible on June 14, 2011. To this written request, the Strata Property Agent attached a copy of the invoice from the restoration company that conducted this restoration for the insurance company. This invoice was dated May 31, 2011 with a date stamp of June 13, 2011. This invoice identified May 16, 2011 as the "date of loss", presumably when most of the work to repair the water damage to the lower rental unit was conducted. None of the other receipts for either labour or supplies extend to July 2011.

Based on my consideration of the written evidence and the landlord's testimony, I allow the landlord's claim for loss of rent of \$1,000.00 for June 2011, as I accept that repairs were still being conducted in June 2011. I dismiss the landlord's claim for loss of rent for July 2011, as I am not satisfied that the landlord has proven that he needed more than one month after he gained occupancy of the premises to complete the restoration and repairs to make this rental unit available for potential new tenants. As noted above, none of the documents submitted into written evidence confirm that work was still ongoing during July 2011 to the rental unit or that the landlord needed this extra time to restore the rental unit to rentable condition.

I dismiss the landlord's claim for reimbursement of bailiff's costs to remove the tenant as this is not an expense that can be recovered under the *Act*.

I allow the remainder of the landlord's undisputed application for a monetary award as outlined in the above table unless otherwise noted. As the landlord has been

successful in this application, I allow the landlord to recover his \$100.00 filing fee for this application from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover the following damage and losses arising out of this tenancy as well as his filing fees for this application.

<b>Item</b>	<b>Amount</b>
Deductible Payment to Strata Corporation to Repair Damage from garberator and leakage from kitchen sink	\$9,625.00
Repairs to Leaking Toilet	181.44
Repairs to Disabled Fire Alarm #1	78.40
Repairs to Disabled Fire Alarm #2	142.40
Vandalism Fire Alarm	616.00
Carpet Cleaning	59.71
Doors and Handles for Inside	112.00
Doors and Handles for Inside	31.36
Painting (Eligible Portion of Supplies and Labour)	248.21
Loss of June 2011 Rent	1,000.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$12,194.52</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*.