

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for unpaid rent; for damage to the rental unit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

Pursuant to a written agreement, the month to month tenancy started on September 1<sup>st</sup>, 2009. The rent is \$1250.00 per month and the tenant paid a security deposit of \$625.00. The tenant gave the landlord her notice to end tenancy effective February 28<sup>th</sup>, 2011. The landlord testified that he discarded the move-in condition inspection report, and that the move-out report is no longer available.

The landlord testified that the tenant was responsible for her co-tenant; he said that when the co-tenant moved she did not pay her portion of the rent and that to date he is still short of \$405.00 in unpaid rent. The landlord stated that he was out of the country

when the tenant moved out at the end of February 2011, and that he returned on March 9<sup>th</sup> to find extensive damages. He stated that he offered the tenant to do an inspection and that the tenant declined but offered to forfeit her security deposit in compensation for damages. The landlord said that he did not accept the tenant's offer because the damage exceeded the amount of the security deposit. He said that two former tenants tried to assist him while he was away by showing the unit, but that prospective tenants were not interested because of the condition of the unit.

In his documentary evidence, the landlord provided 13 photographs in support of his claim for damages, showing in part but not limited to; the layout of the unit once repaired and cleaned; 6 scrape marks on the laminate flooring; and patches and tears on the sheetrock walls in various rooms.

The landlord submitted a monetary claim as follows:

- Replacement of laminate flooring:	\$2207.89 (quote only)
- Repair sheetrock:	\$ 65.00
- Replace the oven door handle:	\$ 88.00
- Shampoo carpets:	\$ 35.00
- Unpaid rent:	\$ 405.00
- Loss of 1 month rental income:	\$1250.00
- Filing fee:	\$ 50.00
- Total:	\$4100.89

The tenant testified that the landlord never contacted her to do a move-out inspection or to negotiate a settlement for repairs. She stated that she left the unit in better condition than when she moved in, and that she never heard from the landlord until she made an application for dispute resolution for the return of her security deposit. The tenant said that the damage shown on the photographs of the sheetrock walls was not there when she left, that she thoroughly cleaned the unit from top to bottom, and that she did not scrape the flooring. She stated that she did not recognize the damage to the floor as

being from her suite, that she never heard anything from the landlord about the alleged damages, and that there are no photographs of the carpets.

The landlord argues that the tenant is lying.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not necessarily met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. With this in mind I make the following findings:

Section 23(3), (4), and (5) of the *Act* places the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports. I find the landlord's documentary evidence of little value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by this tenant. Further, the landlord did not submit evidence concerning repairing the damaged areas and provided only a quote to replace the laminate flooring, which is not reflective of an actual cost for repairs. I do not find that this decision reflects objectively on the landlord's obligation to mitigate his loss. For these reasons I dismiss the aspect of the landlord's claim for damages.

Concerning the loss of rental income due to the extent of the damages; I am not persuaded that the damages were so extensive that the landlord could not re-rent the unit for a whole month. In his statement of facts, he stated that his new tenants “commented” on the flooring; that is not to say that the unit could not be rented, or that any of the repairs could not be completed while the tenants occupied the unit. Therefore I dismiss this portion of the landlord's claim.

Concerning the unpaid rent; the tenant did not present rebuttal evidence and I accept the landlord's testimony that rent was not paid as required by the tenancy agreement. Therefore I grant the landlord recovery of that loss for the full amount.

### Conclusion

The landlord established a claim of \$405.00. Since he was partially successful I grant the landlord partial recovery of the filing fee for \$25.00 and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum of \$430.00.

This Order may be registered in the Small Claims Court and enforced as an order 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*.

Dated: November 08, 2011.

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Residential Tenancy Branch