

## **DECISION**

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

The tenants did not attend this hearing, although I waited until 9:47 a.m. in order to enable them 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.

### Background and Evidence – Service of Dispute Resolution Hearing Packages

The landlord testified that the tenants abandoned this tenancy by November 15, 2009, when the female tenant sent the landlord a letter advising that they had vacated the rental unit. He entered a copy of this letter into written evidence. The landlord said that the tenants have not provided a forwarding mailing address. He said that he sent a copy of the dispute resolution hearing package to the tenants by registered mail on July 28, 2011 to the only address he has for them, a mailing address that they kept for their business. He provided Canada Post Tracking Numbers to confirm his mailing of these packages to both tenants.

### Analysis – Service of Landlord's Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

**89(1)** *An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord's mailing of the dispute resolution hearing packages to a mailing address for the tenant's business does not satisfy the requirements of section 89(1)(c) of the *Act*. Given the extensive passage of time since the end of this tenancy, there is no certainty that registered letters sent to that address will have been received by the tenants.

However, as noted in section 89(1)(e) of the *Act*, I am authorized to consider service to have occurred pursuant to section 71(1) of the *Act* under certain circumstances.

Section 71(1) reads in part as follows:

**71** (1) *The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.*

*(2) In addition to the authority under subsection (1), the director may make any of the following orders:...*

*(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*

*(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act...*

At the hearing, the landlord testified that he assumed that the tenants received his dispute resolution hearing packages because they had not been returned as undeliverable by Canada Post. As I was not satisfied that this was so, I gave the landlord until 4:00 p.m. on the day of the hearing to fax to the RTB any documentary evidence pertaining to the service of the dispute resolution hearing package.

A few hours later, the landlord faxed information from Canada Post's public website regarding the details of the delivery of the two hearing packages. The landlord provided written evidence that the package sent to the female tenant was successfully delivered and signed for by the female tenant on August 4, 2011. He also provided written evidence from that website to demonstrate that the hearing package sent to the male tenant was not delivered, although it does not appear to have been returned to the landlord.

I find that there is sufficient evidence to demonstrate that the hearing package sent to the female tenant has been sufficiently served for the purposes of this *Act* as of August 4, 2011, the date of the successful delivery to the female tenant by Canada Post. Pursuant to section 71(2) of the *Act*, I find that the female tenant has been served with a copy of the landlord's dispute resolution hearing package.

Since the hearing package sent to the male tenant has not been delivered and was not sent in compliance with section 89(c) of the *Act*, I find that the landlord has not served the male tenant with the dispute resolution hearing package. I dismiss the landlord's application for a monetary Order against the male tenant with leave to reapply.

#### 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 month-to-month tenancy commenced on November 1, 2007. Monthly rent was set at \$1,607.35, payable in advance on the first of each month. The landlord continues to hold the tenants' \$775.00 security deposit plus interest paid on November 1, 2007.

The landlord applied for a monetary award of \$1,020.00, itemized as follows:

Item	Amount
Unpaid November 2009 Rent	\$1,607.35
Damage to Doors	70.00
Carpet Cleaning	131.25
Less Security Deposit plus Interest (\$775.00 + \$13.60 = \$788.60)	-788.60
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award Requested</b>	<b>\$1,020.00</b>

Although the landlord did not formally apply for authorization to retain the tenants' security deposit, the breakdown of his request for a monetary award clearly included his intention to retain that deposit in partial satisfaction of his monetary award. The landlord also applied to recover his \$50.00 filing fee from the tenants.

Analysis

I am satisfied by the oral and written evidence that the tenants abandoned this tenancy. Based on the undisputed evidence of the landlord, including receipts for damage to the doors in this rental unit and carpet cleaning, I find that the landlord is entitled to a monetary award in the amount requested in his application. This monetary award allows the landlord a monetary Order against the female tenant. I also allow the landlord to recover his filing fee from the female tenant.

Although the landlord's application does not seek to retain the tenants' 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.

Conclusion

I issue a monetary Order in the landlord's favour against the female tenant in the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid November 2009 Rent	\$1,607.35
Damage to Doors	70.00
Carpet Cleaning	131.25
Less Security Deposit plus Interest (\$775.00 + \$13.60 = \$788.60)	-788.60
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,070.00</b>

The landlord is provided with these Orders in the above terms and the female tenant must be served with a copy of these Orders as soon as possible. Should the female 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.

I dismiss the landlord's application for a monetary Order against the male tenant with leave to reapply.

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 02, 2011

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Residential Tenancy Branch