

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNR, MNSD, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that the tenants have vacated the rental unit and an order of possession is not required.

### Issue(s) to be Decided

Is the landlord entitled to a monetary for unpaid rent?

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

Is the landlord entitled to money owed or compensation for damage or loss under the Act?

### Background and Evidence

The tenancy began on September 9, 2011. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants. The tenants were served with a ten day notice to end tenancy for non-payment of rent with an effective date of December 20, 2011. The tenants accepted the notice and vacated the rental unit on the effective date.

The landlord testified that the tenants owe \$600.00 in unpaid rent for September 2011 and the tenants have not paid any rent for October, November and December, 2011.

The landlord further testified that he is seeking compensation for loss revenue for the month of January 2012, in the amount of \$800.00, which is half the monthly rent as he was able to re-rent the unit commencing January 15, 2012.

The landlord further testified that he is seeking compensation for damages to the garage door. The door was new when the tenants moved into the rental unit and it is now dented and the paint is scratched. The door has not been repaired and is still operational. The landlord has filed an estimate of the cost to fix the garage door.

The tenants agree they owe the landlord rent for September, October, November and December 2011. The tenants disagree that the landlord should be allowed to recover loss revenue for January 2012, as they were evicted from the rental unit for non-payment of rent.

The tenants testified that the door was new when they moved into the rental unit, and they do not know how the door was dented.

The female tenant testified when they first moved into the rental unit there was a lot of construction vehicles parking in the complex and only recently the construction vehicle we told they cannot park in the residential area. The tenant suggested that maybe one of their vehicles hit the garage door.

### Analysis

This is the landlord claim for damage or loss under the Act and therefore the landlord has the burden of proof to establish their claim on the civil standard.

To prove a loss and have the tenants pay for the loss requires the landlords to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In a month to month tenancy, if the tenancy ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month. The landlord is required to make reasonable efforts to mitigate the loss and in this case the landlord was able to re-rent the rental unit for part of the following month. Therefore the landlord has proven a loss and is entitled to recover that loss in the amount of \$800.00.

I grant the landlord a monetary order for unpaid rent and loss revenue in the amount of \$6,200.00.

In this case a move in condition inspection report was done and the garage door was new when the tenants moved into the rental unit. The tenants agree that the door is

dented. The tenants deny they damaged the garage door. The tenants stated that construction vehicles were parking on the street at that time and it's possible that they may have damaged the door when pulling into their driveway. I find that the landlord has not proven the damage to the garage door was cause due to the action or neglect of the tenant. Therefore, I dismiss the claim for damages.

I find that the landlord has established a total monetary claim of \$6,300.00 comprised of rent owed, loss revenue and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,500.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord may keep the security deposit and pet deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: January 05, 2012.

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Residential Tenancy Branch