

## **DECISION**

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

### **Introduction**

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the legislation, to keep all or part of the pet damage and/or security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has acknowledged receiving the documentary evidence package from the Landlord. The Tenant has not submitted any documentary evidence. As both parties have attended the hearing by conference call and have acknowledged receiving any evidence submitted by the other party, I am satisfied that each has been properly served with the notice of hearing and evidence packages under the Act.

At the beginning of the hearing it was clarified with both parties that the Tenant has already vacated the rental unit and that an order of possession is no longer required by the Landlord. This portion of the Landlord's Application is withdrawn and no further action is required.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claims for recovery of litigation costs (photographs and postage) are dismissed.

This hearing was adjourned to May 29, 2012 to complete the testimony of both parties regarding the Landlord's claims. Both parties were sent a notice from the RTB of an adjourned hearing to be continued on May 29, 2012 at 2:30 pm.

The Landlord submitted late evidence received by the Residential Tenancy Branch on May 18, 2012 regarding costs not previously applied for. This is in contravention of the Rules of Procedure as explained to the Landlord during the hearing on May 2, 2012 and again at the beginning of the adjourned hearing on May 29, 2012. This late evidence shall not be considered in this hearing.

At the adjourned hearing date of May 29, 2012 at 2:30 pm, both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

Both parties agree that the Landlord currently holds a \$500.00 pet damage deposit and a \$500.00 security deposit. The Landlord states that a 10 day notice to end tenancy for unpaid rent was personally served on the Tenant on March 12, 2012. The notice shows an effective date of March 12, 2012 and that the Tenant has failed to pay rent in the amount of \$1,000.00 that was due on March 1, 2012. The Landlord claims that the Tenants did not vacate the rental unit until April 1, 2012, but the Tenant disputes this claiming that they vacated on March 16, 2012. The Landlord states that the Tenant has not paid the March 2012. The Tenant confirms this in his direct testimony and states that he cancelled the rent cheque for March 2012 and did not pay the rent for March 2012. The Landlord is seeking recovery of the March 2012 unpaid rent of \$1,000.00. The Landlord is also seeking loss of rental income for April 2012 of \$1,000.00 because of the mess left by the Tenants. The Landlord states that the unit was cleaned up and was rentable as of April 12, 2012 and at that time posted an ad for rent on the same day. The Landlord states that she was able to re-rent the unit for May 1, 2012. The Tenant disputes this stating that as of March 2, 2012 "Rent" signs were given to them by the previous property manager, J.V. The Tenant's witness, J.V. has confirmed that he gave the Tenants the signs to post in their window on March 2, 2012. I find that the Landlord has established a claim for unpaid rent of \$1,000.00 for March 2012 based upon the Tenant's own direct testimony. I find further that the Landlord has established a claim for loss of rental income for being unable to re-rent the unit because of it's condition, however the Landlord has failed to provide sufficient evidence of her duty to mitigate her losses in her claim for the entire month. I grant a nominal award of \$350.00 for the loss of rental income.

The Landlord seeks compensation for the following items. A quote for replacing a damaged exit door for \$492.80 based upon the invoice from Windsor Plywood. The Tenant disputes and states that the door has not been replaced as of the date of the hearing and that this is a quote. The Landlord has confirmed this. I find that the Landlord has failed to provide sufficient evidence of damage/loss and dismiss this portion of the Landlord's claim.

Replacement for 3 blinds at \$8.80 each for a total of \$29.56. The Tenant disputes this claim as the Landlord has not provided any receipts or proof of damage. The replacement for 3 light bulbs at \$2.00 each plus tax for \$6.72. The Tenant disputes this stating again that he did not know that he was responsible for the replacement of bulbs and that the Landlord has only provided a receipt for \$4.82 for a bulb. The Landlord has submitted a photograph of a ceiling fan light missing 3 bulbs. I find based upon the Tenant's own direct testimony that the Landlord has established a claim, however only for the \$4.82 based upon the Landlord's documentary evidence.

\$17.34 for plumbing (snaking a toilet) and has submitted an interact receipt dated December 7, 2011 for this amount for the cost supplies from West Coast Home Hardware. The Tenant disputes this stating that the Landlord bought the snake and returned it to the store. The Tenant's witness, J.V. confirms this as he was the one who repaired the toilet. I find based upon the witness's testimony that the Landlord has failed to establish this claim and this portion of the monetary claim is dismissed.

\$19.56 for supplies from West Coast Home Hardware dated December 7, 2011 for costs of supplies required for the re-installation of the toilet. I find based upon the undisputed testimony of the Landlord that a monetary claim has been established for these costs.

\$15.00 for a leaf basket damaged by the Tenants. The Tenants dispute this stating that the Landlord's former property manager, J.V. damaged it when the Landlord failed to pay his wages and fired him. The Tenant's witness, J.V. gave testimony that he "destroyed" the basket. I find based upon the Tenant's evidence that the Landlord has failed to establish a claim and this portion of the monetary claim is dismissed.

The Landlord is seeking \$15.00 for 2 end tables as part of the semi-furnished rental. The Tenant disputes that any tables were given for their use. The Landlord is unable to provide sufficient evidence that the 2 end tables were provided to the Tenant or that the Landlord suffered a loss of \$15.00 for these tables. I find that the Landlord has failed to provide sufficient evidence to establish a claim for the loss of these two tables.

The Landlord is seeking \$5.00 for the replacement of a set of keys to the rental not returned by the Tenant. The Tenant disputes this stating that the keys were returned to the property manager, J.V. The witness, J.V. confirms this in his testimony that he has the keys and that they were returned. The Landlord confirms this stating that the keys were returned to her by the police. I find that no further action is required for this portion of the claim.

The Landlord is seeking recovery of \$18.85 for rug shampoo cleaner and has submitted a receipt from Walmart. The Tenant disputes this claiming that no damage was caused to the rugs. The Landlord states that several rugs had pet stains and gum on them. The Landlord has submitted photographs as evidence. I find on a balance of probabilities that the Landlord has established a claim, however the receipt submitted also shows charges for other items. With no explanation from the Landlord for these other costs, I award \$16.60 consisting of the \$14.83 pet stain items and the HST.

The Landlord is seeking \$45.00 for her own labour in washing all of the floor areas of the rental. The Landlord has submitted photographs and states that there were many items left by the Tenant that required several hours of cleaning. I find that the Landlord has established a claim for this and award this portion of the monetary claim.

The Landlord seeks \$100.00 for the cost of labour to clean the area rugs from pet stains and gum. The Landlord states that this took several hours. The Tenant disputes this stating that the carpets were dirty when they moved in. The Landlord disputes this and refers to the completed condition inspection report for the move-in dated November 5, 2011 which states that the carpets were "good" and "washed". I find based on this basis that the Landlord has established a claim for the \$100.00 in labour.

The Landlord is also seeking \$100.00 for general cleaning labour for the stove, refrigerator and cupboards. The Tenant disputes this stating that he paid cleaners to clean the rental unit. The Landlord relies on her photographs submitted of the condition of the rental unit. I find on a balance of probabilities that the Landlord has established a claim for this amount based upon the photographs submitted on the condition of these areas at the end of the tenancy.

The Landlord is seeking \$200.00 for general labour for cleaning throughout the rental. The Tenant disputes this stating that the rental was left clean when he left. The Landlord has submitted photographs in support of her claim. The Landlord states that it took her atleast 10 hours of cleaning. The Tenant argues that the ex-property manager admitted to "trashing" the rental property. Referring back to the Tenant's witness, J.V., the witness admitted during the hearing to destroying a plant basket when he found out that the Landlord had dismissed him. With conflicting testimony, I rely on the Landlord's photographs which show lack of cleaning and maintenance by the Tenants as opposed to any destruction of property. The Landlord has established a claim for cleaning of \$200.00.

The Landlord has withdrawn the following portions of her claim. 4 pairs of sheets for \$30.00, returned cheque charge of \$50.00, new lock charge of \$16.79, \$200.00 for rug shampooing of 3 areas rugs and the paying of \$100.00 to manager. As such, no further action is required for these aspects of the Landlord's monetary claim.

The Landlord has established a total monetary claim of \$1,835.98. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the \$1,000.00 pet damage and security deposits in partial satisfaction of the claim. The Landlord is granted a monetary order under section 67 for the balance due of \$885.00. This order may be filed in the Small Claims Division of the Provincial Court and may be enforced as an order of that Court.

### Conclusion

The Landlord is granted a monetary order for \$885.00.  
The Landlord may retain the pet damage and security deposits.

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: June 1, 2012.

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Residential Tenancy Branch