

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, authorization to keep all or part of the security deposit, and to recover the filing fee.

The agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice") was considered. The agent stated that the tenants were served with the Notice by registered mail on October 19, 2012, to the forwarding address provided by the tenants. A tracking number was provided in evidence. The agent stated that a second package containing evidence was served on the tenants via registered mail on January 3, 2013. A tracking number was provided in evidence. Based on the undisputed testimony of the agent and the documentary evidence, I find the tenants were served in accordance with the *Act*.

### Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A month to month tenancy began on May 1, 2005. Monthly rent in the amount of \$825.00 was due on the first day of each month and was increased during the course of the tenancy to the present amount of \$1,000.00 per month. A security deposit of \$412.50 was paid at the start of the tenancy which has accrued \$14.62 in interest for a total security deposit being held by the landlord in the amount of \$427.12, which includes interest.

The landlord testified that he was first notified by the tenants on September 15, 2012 that they would be vacating the rental unit on October 15, 2012. The tenants paid

\$500.00 of the \$1,000.00 October 2012 rent as they were vacating midway through the month. The landlord stated that he is entitled to the full month of October 2012 rent due to the tenants failing to provide proper notice under the *Act*. The landlord stated that he did not agree to reducing October 2012 rent in half.

The landlord has claimed \$1,019.78 comprised of the following:

1. Unpaid portion of October 2012 rent	\$500.00
2. Carpet cleaning (receipt provided)	\$351.68
3. Blind repairs including shipping (receipts provided)	\$144.92
4. Postage fees related to application for first tenant (receipt provided)	\$11.59
5. Postage fees related to application for second tenant (receipt provided)	\$11.59
<b>Total</b>	<b>\$1,019.78</b>

The landlord testified that the tenants failed to have the carpets cleaned before they vacated which is supported by the condition inspection report. The landlord stated that the blind repair including shipping of \$144.92 was cheaper than replacing the damaged blinds. The landlord explained that he brought the blinds with him to the service centre and they shipped the blinds back when they were repaired. The landlord submitted an invoice in support of the carpet cleaning and blinds repair. The landlord also submitted the condition inspection report in evidence.

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for unpaid portion of October 2012 rent**– Based on the undisputed testimony of the agent, the tenants gave notice on September 15, 2012 that they would be paying half of October 2012 rent and vacating on October 15, 2012. Rent was due on the first day of each month. The tenants vacated the rental unit on October 15, 2012 having only paid \$500.00 of the \$1,000.00 rent for October 2012.

Section 45 of the *Act*, states:

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

**(a) is not earlier than one month after the date the landlord receives the notice, and**

**(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

**[emphasis added]**

Based on the agent's undisputed testimony, **I find** the tenants breached section 45 of the *Act* by failing to provide proper Notice under the *Act*. The tenants did not provide written notice to the landlord to end the tenancy that is is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord had no obligation to agree to anything less than full October 2012 rent as a result, and testified that he did not agree to any other arrangements with the tenants.

**I find** the landlord has met the burden of proof as the landlord has proven that the tenants' failure to pay rent resulted in a loss to the landlord and that the loss is in the amount of \$500.00. Therefore, **I find** the landlord has established a monetary claim of **\$500.00** for the unpaid portion of October 2012 rent.

**Landlord's claim for carpet cleaning** – The landlord submitted an invoice in evidence in the amount of \$351.68 for carpet cleaning. As per Residential Tenancy Branch Policy Guideline #1 tenants are responsible for steam cleaning or shampooing the carpets after a tenancy of one year. This tenancy started in 2005. As a result, and given the undisputed testimony of the landlord that the tenants failed to have the carpets cleaned and the supporting condition inspection report submitted in evidence, **I find** the landlord has met the burden of proof and is entitled to **\$351.68** for carpet cleaning.

**Landlord's claim for blind repairs including shipping** – The landlord submitted invoices in evidence in the amount of \$144.92 in support of his claim for blind repair and shipping. I accept the landlords undisputed oral testimony that it was cheaper for him to transport the blinds to have them repaired in a different area and have them shipped back to the rental unit than to replace the blinds. **I find** the landlord, has met the burden of proof and is entitled to **\$144.92** for blind repair including shipping.

**Landlord's claim for postage costs related to the application** - The landlord has claimed for the postage costs related to filing his application. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the *Residential Tenancy Act*. As a result, this portion of the landlord's claim is dismissed in full without leave to reapply as there is no remedy under the Act other than the filing fee which will be addressed below.

As the landlord's application has merit, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**. Therefore, **I find** the landlord has established a total monetary claim of **\$1,046.60** comprised of \$500.00 for half of October 2012 unpaid rent, \$351.68 for carpet cleaning, \$144.92 for blind repair including shipping, and the \$50.00 filing fee.

The landlord is holding a security deposit of \$427.12 which includes interest.

**Monetary Order** – I find that the landlord has established a total monetary claim of \$1,046.60. **I find** that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenants' security deposit of \$427.12 which includes interest. **I authorize** the landlord to retain the full security deposit and interest of \$427.12 in partial satisfaction of the claim, and **I grant** the landlord a monetary order pursuant to section 67 of the Act, for the balance owing to the landlord in the amount of **\$619.48**.

### Conclusion

I find the landlord has established a total monetary claim of \$1,046.60. I authorize the landlord to retain the security deposit including interest of \$427.12 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the Act for the balance due of **\$619.48**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2013