



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURION LUMBER MANUFACTURING LIMITED C/O ROWAN  
PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MND, MNR, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of rent, compensation for damages and an order to keep the security deposit.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on January 3, 2013, verified by the Canada Post tracking receipt, the respondent did not appear. The hearing was therefore conducted in the respondent's absence.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation under section 67 of the *Act* for rent, damages or loss of rent?

### **Background and Evidence**

The landlord testified that the fixed term tenancy began in on August 25, 2012 and was to expire on August 31, 2013. The rent was set at \$1,050.00, due on the 1st of each month and a security deposit of \$525.00 was paid.

A copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, copies of communications, copies of advertisements and copies of invoices were in evidence.

The landlord testified that the tenant fell into arrears with the rent and still owed the landlord \$1,784.06 when she vacated, including \$734.06 arrears for November 2012, and \$1050.00 for December 2012.

The landlord testified that the tenant vacated effective December 21, 2012, at which time a move-out inspection was done with the tenant and the forwarding address was provided.

The landlord testified that the tenant did not return the key and also failed to repair a wall that had been removed from the carport without permission thereby causing the landlord to incur costs totaling \$179.89, which is being claimed.

The landlord testified that they immediately listed the rental unit for rent but were not able to find a replacement tenant and lost a month rent of \$1,050.00 for January 2013, which is also being claimed.

The total claim is for \$3,013.95.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant failed to pay all of the rent for November and December 2012 and the landlord is entitled to be compensated \$1,784.06.

In regards to the claims for damage and losses, section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the Respondent's violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In the case before me, I find that the tenant did violate the agreement by ending the tenancy before the expiry date and that the landlord did incur a loss of \$1,050.00 for the month of January 2013, as a result. I further find that the landlord made a reasonable

effort to find a replacement tenant by advertising and showing the unit and this claim has successfully met the test for damages. I find that the landlord is entitled to be compensated in the amount of \$1,050.00 for lost revenue.

With respect to the claim for \$179.89 for alleged damage to the carport and the cost for re-keying lock, I find that neither of these claims meet the test for damages because the carport damage is not documented in the move out condition inspection report and a landlord is responsible to pay for changing the locks of a rental unit under section 25 of the Act.

Given the above, I find that the landlord is entitled to be compensated \$2,884.06 in compensation for the rent and loss of revenue, and the \$50.00 cost of this application. I order that the landlord retain the \$525.00 being held as security deposit, in partial satisfaction of the claim, leaving a remainder of \$2,359.06 still outstanding and owed to the landlord.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$2,359.06. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: March 25, 2013

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Residential Tenancy Branch