

DECISION AND REASONS

Dispute Codes:

OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for:

- An Order of Possession due to unpaid rent
- A Monetary Order to recover rental arrears ,
- An order to retain the security deposit in partial satisfaction of the monetary claims.
- A Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- Recovery of the filing fee associated with this application in the amount of \$100

Both parties attended and participated in the hearing and provided submissions and affirmed testimony to this hearing.

At the outset of the hearing the applicant advised that the tenants had vacated the rental unit. As the tenants have moved from the rental unit, this decision will only deal with matters pertaining to the monetary claim.

The landlord's claim on application is as follows:

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|-------------------------------|-----------|
| Unpaid rent for April 2009 | \$1700.00 |
| NSF charge - April 2009 | \$40.00 |
| Late fee – April 2009 | \$25.00 |
| Loss of revenue for May 2009 | \$1700.00 |
| Loss of revenue for June 2009 | \$1762.00 |

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|---|------------------|
| Carpet Cleaning | \$162.50 |
| Suite cleaning | 323.40 |
| Light bulbs replacement | \$52.00 |
| Wall repair and painting costs | \$1050.00 |
| Filing fee | \$100.00 |
| Total of landlord's claim on application | \$6914.90 |

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 01, 2008. Rent in the amount of \$1700 was payable in advance on the first day of each month. The parties entered into a Tenancy Agreement with a fixed term ending May 31, 2009. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$850.

The undisputed testimony of both parties is that the first two (2) of the four (4) *named* tenants in this dispute originally entered into the Residential Tenancy Agreement. These same two tenants fully vacated from the rental unit by February 2009, leaving the rental unit occupied by the latter two named tenants. The original tenants verbally assigned the rental unit to the latter two of the four *named* tenants (the candidate assignees) and the tenancy continued, until its demise, with the knowledge and consent of the landlord, while the landlord attempted to formally transfer interest in the tenancy to the candidate assignees. However, the landlord's attempts to formally transfer the original tenant's interest in the tenancy agreement did not ever come to completion due to a number of issues. During this process the landlord accepted rent from the two candidate assignees for the month of March 2009.

The tenants and occupants of the rental unit failed to pay rent in the month of April 2009 and on April 07, 2009 the landlord served all four with a Ten Day Notice to End Tenancy for non-payment of rent with an effective date of April 16, 2009. All occupants of the rental unit subsequently vacated the unit, which was realized by the landlord on inspecting the rental unit on April 25, 2009. During this inspection the landlord came to know that a number of items in the suite required remediation, as claimed on application, before it could again be rented. The landlord's testimony is that the amount of work required could not allow the landlord to ensure the suite could be shown and rented for May, 2009. The landlord claims the fixed term of the tenancy obligated the original tenants to ensure payment of rent to May 31, 2009.

The landlord seeks loss of revenue for June 2009, at an increased rent of \$1762 effective June 01, 2009. The landlord's testimony is that none of the required work to the rental unit has been done towards the suite's remediation for occupancy. The landlord has chosen to wait and do the work once any money owed to the landlord by the tenant has been determined via hearing, or paid to the landlord.

The tenants did not dispute the landlord's submissions or position, but did enquire as to any obligation by the candidate assignees to share in settling any monetary claim of losses for which the tenants may be found liable or ordered to pay.

Analysis

On the preponderance of all the evidence I am satisfied the landlord is entitled to unpaid rent for April 2009 and associated NSF and late fees. As per the terms of the Tenancy Agreement and the landlord's inability to remedy damage to the rental unit in time to rent the unit for May, I am satisfied the landlord is further entitled to compensation for May 2009 rent.

Assignment is the act of transferring all or part of a tenant's interest (under the tenancy agreement) to a third party or the assignee: who would then become the tenant of the original landlord. Once the tenancy agreement is transferred, the assignee takes on the obligations of the original tenant commencing at the time of the assignment; and, unless the landlord agrees otherwise, the original tenant may retain some residual liability, in

the event of a failure of the assignee to carry out the terms and conditions of the tenancy agreement. I find in this matter that there is no evidence of a formal assignment to the candidate assignees; therefore the original tenants bear all liability for the tenant's terms and obligations of the tenancy under the Act and tenancy agreement. The original tenants may be able to seek compensation from the candidate assignees personally, or may be able to seek compensation under the Residential Tenancy Act via an application for Dispute Resolution.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test for damage and loss claims as per Section 7 of the Act.

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in 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 steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

On the balance of probabilities and on the preponderance of the evidence before me, I find the landlord has sufficiently met the test for their claim of damages and loss. In the absence of actual receipts for work performed to rectify damages, some Arbitrators have accepted competing (several) quotes or estimates for the required work so as to

establish a reasonable and credible amount required to compensate for the claimed loss. In the absence of such competing estimates I accept the landlord's sole quotes at 85% of their tendered estimates. Therefore;

I find the landlord is entitled to the cost for cleaning of carpets in the amount of \$133.87.

I find the landlord is entitled to costs for cleaning of the suite in the amount of \$274.89.

I find the landlord is entitled to their request for light bulb replacement in the amount of \$44.62.

I find the landlord is entitled to costs for wall repairs and painting and grant the landlord for same in the amount of \$892.50.

I find the landlord is in the business of renting out the rental unit and therefore had a duty and obligation to attend to the necessary repairs and remediation of the rental unit as quickly as possible to again rent it out and avoid revenue losses. The landlord's testimony is that they did not perform, and has yet to perform any work towards readying the unit for rental on June 01, 2009, and therefore has artificially incurred revenue losses for the month of June 2009. I therefore decline to award the landlord loss of revenue for the month of June 2009, and dismiss this portion of the the claim.

I find the landlord's application has partial merit, and the landlord is therefore entitled to partial recovery of the filing fee from the tenants for the cost of this application in the amount of \$50.

I order that the landlord retain the deposit and interest of \$857.45 in partial satisfaction of the landlord's entitlement claim.

As for the monetary order, I find that the landlord has established an entitlement as follows:

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|----------------------------|-----------|
| Unpaid rent for April 2009 | \$1700.00 |
| NSF charge - April | \$40.00 |

| | |
|--|------------------|
| Late fee – April | \$25.00 |
| Loss of revenue for May 2009 | \$1700.00 |
| Loss of Revenue for June 2009 | Dismissed - \$0 |
| Carpet Cleaning | \$133.87 |
| Suite cleaning | \$274.89 |
| Light bulb replacement | \$44.62 |
| Wall repair and painting costs | \$892.50 |
| Filing fee | \$50.00 |
| <i>Security deposit and interest retained.</i> | <i>-\$857.45</i> |
| Total Entitlement for landlord | \$4003.43 |

Conclusion

I grant the landlord an order under Section 67 for the amount of **\$4003.43**.

If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 28, 2009.