

## **DECISION**

Dispute Codes            MNR, MNSD, OPR, FF (MND)

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. The landlord has amended their application to include a Monetary Order for damage to the rental unit and withdraws their application for an Order of Possession as the tenant has moved from the rental unit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 19, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The landlord sent the tenant evidence of the amended application for damage to the rental unit on February 15, 2010 by registered mail. The tenant was deemed to be served the hearing documents on January 24, 2010 and the evidence package and amendment on February 20, 2010 the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and her agents appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and late fees?
- Is the landlord entitled to a Monetary Order for damage to the rental unit or site?
- Is the landlord entitled to keep all or part of the tenants' security deposit?

### Background and Evidence

This tenancy started on December 01, 2008. This was a fixed term tenancy which expired on November 30, 2009 and then reverted to a month to month tenancy from that date. Rent for this unit was \$1,650.00 per month which was due on the first of each month. The tenant paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 on November 05, 2008.

The landlords' agent testifies that he served the tenant with a 10 Day Notice to End Tenancy on January 06, 2009 by posting this to the tenants' door. The tenant had five days to pay the outstanding rent owed of \$1,782.50 or apply to dispute the Notice. The tenant paid \$900.00 on January 08, 2010 and this was accepted by the landlord for use and occupancy only. The rent now owed is \$882.50.

The landlord states that the tenancy agreement had a separate clause that states the tenant will be charged \$25.00 for each month the rent is late. The landlords rent ledger shows the rent was late in May, July, August, September, October, November, December, 2009 and January 2010. The landlord seeks to recover \$200.00 in late fees for these months.

The landlords' agent testifies that during the move out condition inspection it was noted that there was some damage to the rental unit caused by the tenant during her tenancy. The landlord has submitted estimates, receipts and invoices for this repair work which include: Repair to the bathroom vanity; replace broken heat registers; repair damaged pins and slider on closet doors; repair and paint damaged walls; remove two cans of garbage to dump; replace ball-cock, refill valve and toilet lid; house cleaning and supplies, repair to stove control panel, at a total sum of \$496.48.

The landlords has also provided an estimate and invoices for repair work to: Replace broken fan in master bedroom; replace glass shelves in fridge; replace glass door on fireplace; repairs to the damaged grass in the yard caused by the tenants two dogs, at a total sum of \$502.16.

The landlord has provided the Move in and Move out condition inspection report which the tenant refused to sign.

The landlord seeks to keep the tenants security (\$825.00) and pet damage (\$825.00) deposits and any accrued interest (\$3.85) in partial satisfaction of the claim.

The landlord also seeks to recover the cost of filing her application.

### Analysis

I have carefully considered all the evidence before me; in regard to the landlords claim for unpaid rent; s. 26(1) of the Act states that the tenant must pay rent when it is due under the tenancy agreement.... I find the tenant owes a balance of rent of **\$882.50** and the landlord is entitled to a Monetary Order to recover this amount pursuant to s.67 of the Act. As the landlord has also provided documentary evidence concerning the months the tenant paid rent late I also find the landlord is entitled to recover \$200.00 in late fees from the tenant pursuant to s.67 of the Act.

With regard to the landlords claim for damages; I find the tenant did not appear at this hearing despite having been given opportunity to attend and present any evidence. Therefore, I have applied a test for damage or loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking 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 or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support their claim for damage and loss and they are able to meet all of the components of the above test. The landlord has provided the Move in and Move out condition inspection report detailing the condition of the

rental unit at the beginning and end of the tenancy. The landlord has also provided photographic evidence of the damage and estimates, invoices and receipts for the repair work. The landlord has also shown how she has been able to mitigate her loss by finding a workman to repair the stove control panel rather than having to replace the stove. Therefore, I find that the landlords' application is upheld and she is entitled to a Monetary Order to the amount of **\$998.64**.

I Order the landlord to keep the tenants security and pet damage deposits and any accrued interest in partial satisfaction of her claim. I also find the landlord is entitled to recover the **\$50.00** filing fee from the tenant for the cost of this application. A Monetary Order has been issued to the landlord for the following amount:

Outstanding rent	\$882.50
Damages to the rental unit, site and property	\$998.64
Filing fee	\$50.00
Subtotal	\$2,131.14
Less security and pet damage deposits and accrued interest	(-\$1,653.85)
<b>Total amount due to the landlord</b>	<b>\$477.29</b>

#### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$477.29**. The order must be served on the respondent and is enforceable through the Provincial Court 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 01, 2010.

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Dispute Resolution Officer