

## **DECISION**

Dispute Codes      MND, MNMR, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenants a copy of her application for dispute resolution by registered mail on June 22, 2010. She provided Canada Post Tracking Numbers to confirm her mailing of this material to the tenants. I am satisfied that the landlord sent copies of her application for dispute resolution to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary award for loss or damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this fixed term tenancy commenced on September 15, 2009. She said that this fixed term tenancy was scheduled to end on August 31, 2010. She said that rent was set at \$1,750.00 per month plus utilities. She continues to hold the tenants' \$875.00 security deposit paid on August 22, 2009 and August 27, 2009.

She testified that no move-in condition inspection was conducted with the tenants, although the rental unit was a "brand new condominium" when the tenants commenced occupancy. She said that she attempted a number of times on the last day of this tenancy to conduct a joint move-out condition inspection with the tenants. She said that the tenants did not vacate the rental premises until 2:00 a.m. on June 1, 2010. She said that her husband inspected the premises when the tenants left. She inspected the rental unit the following day. She said that no move-out condition inspection was prepared, nor was one sent to the tenants.

The landlord applied for a monetary award of \$4,999.00. In her application for dispute resolution, she asked that the monetary award include the following items:

| <b>Item</b>                | <b>Amount</b> |
|----------------------------|---------------|
| Refund of Security Deposit | \$875.00      |
| Unpaid Rent                | 40.00         |
| Unpaid Utilities           | 200.00        |
| Lost Fob/Card              | 75.00         |
| Cleaning Fees              | 200.00        |

In her application, she noted that there was excessive damage to the rental unit including damage to the carpet, a hole in a closet door, and dirty walls that required painting before the premises could be rented again.

Neither party provided any written evidence, other than the landlord's application for dispute resolution.

The landlord gave oral testimony that she advertised the premises for rent on Craigslist and showed the premises to a number of prospective renters. She testified that she was able to re-rent the premises to another tenant commencing on June 21, 2010, at a monthly rent of \$1,600.00 per month. That tenant vacated the premises prematurely on July 31, 2010 and she was able to re-rent the premises to another tenant as of August 1, 2010 for a rent of \$1,550.00 per month.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. 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.

In this case, the landlord has not provided any written evidence (e.g., photographs, condition inspection reports, receipts, invoices, estimates, advertisements, etc.,) to substantiate her claim for a monetary award. In the absence of a joint move-in condition inspection and a move-out condition inspection report sent to the tenants, I dismiss the landlord's application for damage caused to the rental premises during this tenancy. In dismissing the landlord's application for reimbursement for the \$75.00 lost fob/card, I also note that the landlord said that she has not replaced this lost item.

I allow the landlord's claim that there remained \$40.00 in outstanding rent from this tenancy from March 2010. The landlord failed to provide any receipts to substantiate her claim that the tenants were responsible for \$200.00 in unpaid utility bills. She could not identify the period covered in her claim. As the landlord has not met the burden of proof required to substantiate her claim for unpaid utility bills, I dismiss her claim for this item.

I accept the landlord's undisputed testimony that this fixed term tenancy was not scheduled to end until August 31, 2010. As such, the tenants remain responsible for ensuring that the landlord received \$1,750.00 per month from the commencement of the tenancy agreement until August 31, 2010. However, section 7(2) of the *Act* requires the party claiming compensation for loss, in this case the landlord, to do whatever is reasonable to minimize the loss. In this case, I accept that the landlord took measures to mitigate the tenants' responsibility for her losses for the period from June 1, 2010 until August 31, 2010, the period of this fixed term tenancy agreement. The landlord advertised the rental premises for rent and was able to obtain a tenant on June 21, 2010, although at a reduced monthly rent of \$1,600.00. The landlord testified that the tenant who commenced renting on June 21, 2010 vacated the rental premises by July 31, 2010. The landlord was again successful in re-renting the premises commencing on August 1, 2010, for a monthly rental of \$1,550.00.

Since the landlord would not have had to accept either of these rentals had the tenants completed the term of their fixed term tenancy, I allow the landlord a monetary award of the difference between the \$1,750.00 she was entitled to receive under the original fixed term tenancy and the amounts she received in rental for the period from June 1, 2010 until August 31, 2010. This difference is calculated as follows:

| <b>Item</b>                                                                                                                         | <b>Amount</b>     |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Tenants' June 2010 Rent Owing                                                                                                       | \$1,750.00        |
| Less June 2010 Rent Received by<br>Landlord from New Tenant # 1<br>$\$1,600.00 \times 10 \text{ days} / 30 \text{ days} = \$533.33$ | -533.33           |
| Tenants' July 2010 Rent Owing                                                                                                       | 1,750.00          |
| Less July 2010 Rent Received by<br>Landlord from New Tenant #1                                                                      | -1,600.00         |
| Tenants' August 2010 Rent Owing                                                                                                     | 1,750.00          |
| Less August 2010 Rent Received by<br>Landlord from New Tenant #2                                                                    | -1550.00          |
| <b>Total Monetary Award for Landlord's<br/>Loss of Rent June 1, 2010- August 31,<br/>2010</b>                                       | <b>\$1,566.67</b> |

I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary Order issued in this decision. No interest is payable over this period. As the landlord has been partially successful in her application for a monetary Order, I allow her to recover her filing fee from the tenants.

### Conclusion

I issue a monetary Order in the following terms which allows the landlord's application for unpaid rent, for losses resulting from this tenancy and for recovery of the landlord's filing fee:

| <b>Item</b>                                                                    | <b>Amount</b>   |
|--------------------------------------------------------------------------------|-----------------|
| Rent Outstanding from March 2010                                               | \$40.00         |
| Monetary Award for Landlord's Loss of Rent from June 1, 2010 - August 31, 2010 | 1,566.67        |
| Less Security Deposit                                                          | -875.00         |
| Recovery of Filing Fee for this application                                    | 50.00           |
| <b>Total Monetary Order</b>                                                    | <b>\$781.67</b> |

I allow the landlord to retain all of the tenants' security deposit in partial satisfaction of the monetary award. I dismiss the landlord's application for all other losses and damage arising out of this tenancy.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.