



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain the security deposit in partial satisfaction of the claim.

Although served by registered mail sent on July 18, 2008, the Tenant did not appear.

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

The landlord was seeking to retain the security deposit for a total claim of \$1,200.00

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for money owed, damages or loss. This determination is dependant upon whether or not the landlord has submitted proof that the specific damages being claimed are validly owed by the tenant to this landlord pursuant to *section 7* and *section 67* of the *Act*.

The burden of proof is on the applicant landlord to prove the claim.

### **Background and Evidence**

The landlord submitted into evidence a copy of the tenancy agreement, move in/out inspection report, a statement of accounts which indicates that a security deposit of

\$480.00 and pet deposit of \$200.00 received by the landlord, as well as copies of invoices for general cleaning and carpet cleaning. The landlord also included a statement of charges with some items initialed by the tenant. These charges included: \$60.00 for carpet cleaning; \$20.00 for drape/blind cleaning and \$50.00 for general suite cleaning. However, I note that the tenant disputed the “lease break” charge of \$300.00 shown on the statement of charges. The hand-written note from the tenant regarding the charge for liquidated damages stated, *“As per tenancy agreement, I had given notice (on May 31<sup>st</sup>) that I would assign and list the apartment, so as not to be charged for breaking the lease – section 7, (#1 &2). I was told not to worry about it.”* However, as the tenant did not appear at the hearing, this argument could not be clarified from the tenant’s perspective.

The landlord testified that it was the landlord’s understanding that the tenant was given an opportunity to sublet, but his efforts were not successful. The landlord testified that the unit was then re-rented by the landlord with a new tenancy agreement effective July 1, 2008. The landlord testified that this action by the landlord served to mitigate the tenant’s liability for reimbursing the landlord for any loss of rental income, but did not release the tenant from the obligation to pay the liquidated damages of \$300.00 under the tenancy agreement

### **Analysis**

In regards to the charges totalling \$130.00 for the cleaning, I find that the tenant clearly consented to the landlord retaining this amount, with signatures or initials on both on the move-out inspection report and on a separate document.

In regards to the disputed liquidated damages of \$300.00 I find that there is a clear provision in the tenancy agreement that requires the tenant to pay this amount if the fixed term tenancy ends before its expiry. However paragraph 7 of the tenancy agreement and section of the Act also permits the tenant to sublet the unit and prohibits a landlord from unreasonably withholding permission to do so. That being said, I accept

the landlord's testimony that the landlord did not refuse the tenant permission to try to sublet the unit. I also find as a fact that the unit was not sublet to another tenant and was re-rented by the landlord under a new tenancy agreement with the renter. I find that the landlord's claim for liquidated damages, pursuant to the tenancy agreement, is supported by the facts and evidence.

I note that 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 and section 7(2) of the Act also states that a landlord or tenant who claims compensation must first take whatever steps are reasonable to minimize the loss. Also, in any claim for damages, the burden of proof is on the claimant to establish and verify that the claimant has actually suffered the compensable loss which was caused by the respondent. In this instance, I find that the landlord has met the burden of proof and took appropriate steps to minimize the potential loss.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord has established a valid claim in the amount of \$480.00, consisting of \$130.00 cleaning costs , \$300.00 liquidated damages and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain this amount from the security deposit, pet damage deposit and interest of \$685.77 in satisfaction of the claim. Accordingly, I also order that pursuant to section 38 of the Act, the Landlord refund the remainder of the deposits in the amount of \$205.77 to the tenant forthwith..

September 23, 2008

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