



Dispute Resolution Services

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

DECISION AND REASONS

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for cleaning and repairs to the rental suite, pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The tenancy started on August 01, 2003 and ended on August 31, 2008. In an earlier proceeding dealing with an application by the tenant, a decision dated November 17, 2008, was rendered finding that the Landlord had contravened section 38 of the Act. The landlord was ordered to pay the tenant double the security deposit plus interest on the base amount, under section 38 of the Act. Today's hearing and my decision on the matters before me today are independent and not related to this previous claim. The landlord acknowledged that the issue of the security deposit was already dealt with and hence this part of the landlord's application to retain the security deposit is dismissed. The landlord testified that the landlord now realizes that a claim for dispute resolution is required under the Act in order to pursue damages and is therefore making this application under section 67 of the Act.

Issues to be decided

Is the landlord entitled to a monetary order for:

- Cleaning and repair costs to restore the rental unit to a condition suitable to be re rented.
- The fee to file this application.

Background and Evidence

The landlord testified that the tenancy ended on August 31, 2008 and the tenant left the rental suite dirty and in a state of neglect. The landlord has submitted into evidence photographs taken on September 05, 2008 which appear to indicate that the rental unit had not been cleaned, with furniture and other discarded items left behind and showing considerable damage to the walls, baseboard, kitchen cabinets, appliances and carpet. The landlord has also submitted into evidence a letter from the new tenant to confirm that on September 01, 2008 the rental unit was dirty and in a state of neglect and disrepair. The tenant stated that when the tenant moved in the unit was dirty and there were a number of abandoned items present in the unit. The tenant stated that the tenant cleaned the rental unit and removed the discarded items. The tenant also stated that when the tenant moved out, the tenant cleaned the unit and that the abandoned items in the photographs were not the property of the tenant. During the hearing the tenant agreed to pay for the cleaning of the unit and for the fines that were levied on the tenant by the strata for violations, during the tenancy. The tenant stated that damage to the baseboard and walls was done by the tenant's room mate's dog.

The landlord also submitted an estimate for wall repair (\$6,600.00), carpentry (1,100.00) and carpet replacement (4,200.00) for a total of \$11,900. The landlord stated that since the tenancy lasted for five years and some of the damage may be due to normal wear and tear, the landlord is claiming compensation in the amount of only one third of this estimate.

The landlord is claiming the following costs:

1.	Cleaning	\$245.00
2.	Painting	\$631.00

3.	Garbage removal	\$120.00
4.	Fines	\$400.00
5.	Wall repair, carpentry, carpet replacement	\$3967.00
	Total	\$5363.00

Analysis

It is important for the parties to know that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- 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 section 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 claimant, that being 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 Tenant. The landlord has submitted into evidence, photographs to support the above claim along with documentation to support the costs incurred. The landlord's claim for cleaning, garbage removal and fines meet the components of the above test and hence I find that the landlord has established a claim for \$745.00.

Regarding the landlord's claim for carpet replacement, I find that the carpet was at least ten years old at the time the tenant moved out, and would likely be replaced before the unit was re rented regardless of the condition the tenant left it in. Hence I find that the landlord is not entitled to costs to replace the carpet. Regarding painting and other

repair, I find that the landlord has established a claim for costs to repair damage to the walls and other damage caused by the tenant's dog. While some of the damage may be due to normal wear and tear over the tenancy term of five years, I find that the landlord is entitled to an amount by which the value of the premises falls short of the value it would otherwise have had. Based on the sworn testimony of both parties and the documentary evidence submitted by the landlord I find that this value would be in the region of \$1000.00 and hence I am awarding the landlord \$1000.00 towards the cost incurred for repair to the walls, carpentry and painting. I also find that the landlord is entitled to the landlord's claim of \$50.00 which is the fee to file this application.

Conclusion

The landlord has established a claim for a monetary order and I grant the landlord an order under Section 67 of the *Residential Tenancy Act*, in the amount of **1795.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 22, 2009.

Dispute Resolution Officer