



Dispute Resolution Services

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

Decision

Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	Keep All or Part of the Security Deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened as a re-hearing of proceedings initially concluded on October 23, 2008. The matter was subject to a Review Consideration on December 1, 2008 and was then scheduled to be reheard today. This hearing is 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.

Both the landlord and tenants attended and each gave affirmed testimony in turn.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order in compensation for money owed or compensation for damage and loss under the Act including cleaning costs and loss of rent for a total claim of \$1,044.00.

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 damages or loss and to retain the security deposit. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities:
 - a) that the damage or loss was caused by the actions of the tenant and in violation of the *Act*
 - b) a verification of the actual costs to repair the damage
 - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began on April 1, 2008 at which time a move-in inspection was done and a security deposit in the amount of \$630.00 was paid. The tenancy ended on July 31, 2008. Submitted into evidence was the following:

- proof of service,
- a copy of the tenancy agreement,
- a copy of the move-in Inspection report signed March 29, 2008 & move out condition inspection report signed on July 30, 2008
- a note a third party confirming that written notice to end tenancy was received from the tenant on July 9, 2008

- a copy of a communication from the landlord to the tenants dated July 18, 2008 advising that the notice given on July 9 would not be effective until August 31 and that the tenants would be “*100% responsible for the tenancy until Aug. 31’08.*”
- a copy of an invoice dated August 15, 2008 showing charges of \$80.00 for drapes and \$120.00 for cleaning with a handwritten breakdown of the above cleaning charges totaling 6 hours at \$20.00 per hour
- an invoice for carpet cleaning dated August 5, 2008 for \$84.00
- a copy of an invoice dated August 12, 2008 for an oven light bulb for \$5.25
- a copy of a new tenancy agreement with a tenant starting on August 15, 2008
- written statements from the tenant and witnesses regarding the tenancy, communications with the landlord about ending the tenancy and testifying as to the condition of the unit at the start of the tenancy
- A telephone log from the tenant recording incoming and outgoing calls between July 1, 2008 and July 18, 2008

The landlord testified that the unit was rented to co-tenants, one of whom first gave verbal notice near the end of June 2008 to end the tenancy as of July 31, 2008 and later furnished the required written notice on July 9, 2008 effective July 31, 2008.

The landlord testified that there was some discussion with the other co-tenant regarding this tenant's hope to remain. However as the termination of the tenancy by one tenant effectively ends the agreement for both, a new tenancy would need to be created. The landlord testified that the tenants were advised in writing that the July 9, 2008 notice was not compliant with the Act and that the tenants would therefore be responsible for any loss of rent for the month of August. The landlord testified that prior to the end of the tenancy, the landlord attempted to mitigate potential losses for the month of August by re-renting the unit. The landlord testified that advertisements were posted on-line, after July 9, 2008. Copies of the advertisements were not submitted into evidence. The landlord testified that the unit

was not re-rented until mid August 2008 and submitted into evidence a copy of the first page of the tenancy agreement between the landlord and the new tenant showing that the new tenancy began on August 15, 2008. The landlord was claiming the loss of one-half a month in the amount of \$630.00.

The landlord testified that a condition inspection was arranged with the tenant at 1:30 pm on July 30, 2008 and after some delay the inspection was set to commence at 2:00 p.m. However the tenant was not finished with the moving and cleanup, so the parties did the walk-through at 7:30 p.m. on July 30. The landlord found that the walls, cabinetry and some of the flooring still needed wiping. In addition, the carpets and draperies were not clean. The landlord pointed out that these deficiencies are documented on the move-out condition inspection report signed by the tenant. The landlord testified that the condition problems were discussed and the tenant remained in the unit on July 30, 2008 after the inspection. The landlord testified that the landlord offered to return the following day to re-inspect, but the tenant declined the offer. On July 31, 2008 the tenancy ended. The landlord testified that the landlord did not return but subsequently contacted caretakers and asked them to prepare the unit for new renters by doing touch-up cleaning and addressing remaining deficiencies as necessary. The care-takers reported that the carpets still needed cleaning and a professional company was hired to shampoo the carpets at a cost of \$84.00. The caretaker also reported that the floors, walls, stove, cupboards, rads, baseboards, sunroom and patio required general cleaning at a cost of \$120.00, as well as cleaning the drapes at a cost of \$80.00. The landlord was seeking reimbursement for these expenditures.

The tenant testified that :

- The unit was not completely spotless when the tenancy started on August 1, 2008 and at that time there were some condition problems. However, the tenant did not feel it necessary to highlight these at the time and the tenant took care of the necessary clean-up.

- The landlord had made representations that the verbal notice to end tenancy given near the end of June was acceptable and did not request a written notice until after July 1, 2008 by which time it would be considered to be late notice under the Act
- The landlord led the tenant to believe that there may be a possibility that one of the co-tenants could continue the tenancy but changed this position and insisted that the tenancy must end.
- The landlord had ample opportunity to minimize losses by re-renting the unit during the month of July for August 1, 2008, particularly as the landlord had knowledge near the end of June that the tenancy would be ending giving a full month during which the unit could be shown.
- During the tenancy a refrigerator had leaked a substance that stained the kitchen floor and this issue was not the fault of the tenant.
- The landlord was aware that more cleaning was to be done subsequent to the inspection held at 7:30 on July 30, 2008. In fact their possession continued for another day during which time all of the deficiencies noted in the move-out condition inspection report were rectified. The landlord gave reassurances these issues were taken care of, then the condition would be acceptable.
- The carpet was cleaned by the tenant on July 31, 2008 and the landlord was told that this was to occur.
- Although the condition inspection report did not show that there were any problems with the bathroom floors, stove, or sunroom, cleaning charges were imposed on the invoice from the caretaker/cleaner for these tasks
- The draperies were washed by the tenant prior to the end of the tenancy.

- The landlord imposed higher standards in reviewing the state of the unit for the purpose of the move-out condition report than it did for the move-in condition inspection report.

The tenant's position is that the unit was left in a condition that was as-good-as or better than it was when the tenants moved in. The tenants acknowledged that the written notice was given after the date required but still feel that the landlord could have re-rented by August 1, 2008. The tenant also offered to find another co-tenant and continue the tenancy, which was rejected by the landlord.

The tenants do not agree to the landlord's monetary claims and feel that their security deposit should have been returned in full.

Analysis

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note 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

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 Respondent 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

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. Once that has been established, the claimant 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 mitigate the damage or losses that were incurred.

Cleaning

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards and must repair damage to the rental unit caused by the actions or neglect of the tenant.

I find that the landlord has proven that the landlord genuinely incurred the cleaning expenses being claimed. However this only satisfied element three of the test for damages. I find that the landlord also must establish and prove that the costs were due to a violation of the Act by the tenant before damages can be justified. I note that the landlord's testimony confirmed that the inspection was done at 7:30 on July 30, 2008 and that the tenant had the remainder of July 30 and the entire day on July 31, 2008 during which all of the deficiencies noted in the inspection report could have been, and

according to the tenant were, taken care of. However, although the landlord did make the offer to do so, the landlord did not return to re-inspect the unit at any time and put this matter completely in the hands of other individuals who were then given compensation for completing whatever tasks they deemed necessary. The landlord admittedly did not personally view the end result of the tenant's cleaning, I also find that some of the cleaning tasks supposedly required and charged-for by the caretaker/cleaner were inconsistent with the move-out condition inspection report, which says nothing about problems with the stove, bathroom floor or sunroom. I also accept the tenant's testimony that the unit was not in pristine condition at the commencement of the tenancy. On the move-in condition inspection many items are merely noted as being "ok". Comments on the move-out report do not indicate that the unit was in need of serious cleaning that would warrant a full six hours by a professional cleaner, In any case, I find that the tenant had more than six hours in which to take care of the problems after they were pointed out. I find on a balance of probabilities that this was done by the tenant, who had a vested interest in doing so. I find no violation of the Act or agreement by the tenant relating to their responsibility to return the unit in a reasonably clean condition and I find that the landlord's claim for reimbursement of the expenditures incurred cannot be hinged on noncompliant actions by the tenant. I find I must dismiss the landlord's claim for \$120.00 for general cleaning, \$80.00 for cleaning the drapes and \$84.00 for carpet cleaning.

Loss of Rent

In regards to the landlord's claim for one-half a month loss of rent, I find that the landlord is required to prove that the landlord made reasonable efforts to minimize the landlord's loss. I find that the landlord failed to supply invoices or copies of the advertisements to re-rent the unit. I find that, from the landlord's testimony, it took one and a half months to move a tenant in, presuming that the landlord's efforts were initiated near the first of July 2008 as soon as the landlord was fully aware that the tenancy was ending. It would generally be expected that a unit in reasonable shape

could be rented within one month. I find that after two weeks of trying the “on-line” free advertising without success, the landlord should probably have considered trying a different method of advertising. I also note that the invoice for cleaning the unit was dated August 15, 2008. While it is not clear exactly when the professional touch-up cleaning was done, it would be a reasonable expectation that for the purpose of attracting new tenants, this should have commenced without delay. While I find that the tenant did breach the Act and that ending the tenancy may have led to a vacancy, I also find that the landlord has failed to prove, on a balance of probabilities, that the landlord did whatever was reasonable to minimize the loss. Therefore the landlord has failed to meet element 4 of the test for damages. Accordingly, I find that the landlord’s claim for \$630.00 representing one-half a month loss of rent for August 2008 must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is not entitled to the monetary compensation being claimed nor is the landlord entitled to be reimbursed for the \$50.00 fee paid to file the application.

Accordingly, I hereby order that the landlord’s application is dismissed.

I find that the tenant is entitled to the return of the security deposit and interest in the amount of \$637.10 and I order that this amount be refunded to the tenant forthwith. This order must be served on the landlord by the tenant and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

January 2009

Date of Decision

Dispute Resolution Officer