



# Dispute Resolution Services

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

## Decision

**Dispute Codes:** MND FF

### **Introduction**

This Dispute Resolution hearing was convened 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).

The landlord was in attendance. Despite being served by registered mail sent on November 21, 2008 the tenant did not appear.

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

The landlord was seeking to receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$2,440.94.

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. This determination is dependant upon answers to the following questions:
  - 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 was caused by the tenant
    - 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 as on May 1, 2003 and ended July 24, 2007. In a previous hearing held in July 2007, the landlord had been granted an order of possession, and a monetary order for rental arrears as well as an order to retain the security deposit. The landlord testified that, after the tenant moved out the unit was left dirty and damaged. The landlord provided a substantial amount of evidence including a copy of the tenancy agreement, move-in and move-out inspection report, photographic evidence, copies of financial statements, invoices and receipts support the claim. The Landlord is claiming a total amount of \$2,2440.00 for: extra cleaning of 32 hours at \$25.00 per hour; a pro-rated amount for repairing walls, seal-coating and painting; drapery cleaning and replacement; hauling charges; repair of a light fixture; replacement of a damaged door; maintenance fees for services rendered by the landlord during the tenancy and a returned cheque charge from November 2006.

### **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.

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 throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to

make repairs for reasonable wear and tear. I find that, if an item or interior finish is close to the end of its useful life, then damage due to wear and tear is likely to affect its value relating to the amount of compensation warranted and it is therefore necessary to assess the pro-rated value of replacing or repairing the item or restoring the finish.

Cleaning - I note that, although the cleaning actually took 36 hours, the landlord has only claimed for 32 hours. I find that the landlord has provided supporting evidence to justify this claim and has fully met all elements of the test for damages. I find that the landlord is entitled to be compensated \$800.00 for the costs of cleaning the unit.

Painting - In regards to the claim of \$814.29 against the tenant for the painting the walls, I note that the unit had last been painted in May 2003 and that the invoice for patching and painting showed \$1,881.50, with \$1,500.00 for the painting and \$275.00 for ceiling repairs. A second hand-written invoice indicated that the portion dedicated solely to sealing and preparing individual walls was \$300.00 and the landlord's position is that the tenant should be responsible for this entire amount without pro-rating as it was directly due to the tenant's violation of the tenancy agreement in painting one room in a dark shade that required additional coats of sealer to cover. I find that the tenant is responsible for both the painting and the sealing, but that the total painting cost of painting must be prorated including the extra sealing costs. I note that the average lifespan of interior painting is set at ten years and the finish had existed for four years prior to the tenant's defacement of the paint. Therefore I find that the landlord is entitled to compensation of 60% of the \$1,908.00 costs, including taxes, totaling \$1,148.00 towards the cost of painting.

Drapery Cleaning/Replacement – The landlord testified that costs were incurred in the amount of \$196.28. I note that the window treatments had most recently been replaced in July 2000 and invoices indicate a total cost of \$654.27. I note that the useful life expectancy of draperies and blinds is set at ten years and therefore I find that the landlord is entitled to the \$196.28 being claimed.

Hauling – I find that the landlord has verified costs incurred in the amount of \$318.00

Lighting Repair – I find that the landlord has proven entitlement in the amount of \$32.09 for the repair of the light fixture.

Door Replacement – The landlord's evidence verifies a cost of \$149.28 incurred to replace a damaged door. The average useful life of a wooden door is 15 years but the age of this particular door is unknown. Therefore I find that the landlord is entitled to \$74.64 representing fifty percent of the costs.

Maintenance and Administration Fees – I find that all of the landlord's claims totaling \$131.00 for services rendered and administration charges that date back to August and May 2004, November 2006 and June 2007 should have been dealt with prior to the ending of the tenancy or included in the claim for outstanding money owed that was the subject of the previous dispute resolution hearing held at the end of the tenancy.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$2,619.01 comprised of \$800.00 for cleaning, \$1,148.00 for painting, \$196.28 for drapes and blinds, \$318.00 for hauling, \$32.09 for the light fixture repair, \$74.64 for the door damage and the \$50.00 fee paid by the landlord for this application. I hereby issue a monetary order for \$2,619.01. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

Dated: January 8, 2009