



Dispute Resolution Services

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

DECISION AND REASONS

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

Introduction

This hearing dealt with applications by the tenant and the landlord, pursuant to the *Residential Tenancy Act*. The tenant applied for the return of the security deposit pursuant to Section 38. The landlord applied to recover the cost of repair to the unit pursuant to Section 67 and to recover the cost of filing the Application for Arbitration pursuant to Section 72. Both parties applied for compensation for damage under the Act pursuant to Section 67.

The tenancy began on December 01, 2007 and ended on October 31, 2008. The rent was \$550.00 and the tenant paid a security deposit of \$275.00 on December 03, 2007.

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.

Issues to be decided

Is the tenant entitled to the return of his security deposit?

Is the landlord entitled to a monetary order for damages to the rental unit and if so in what amount and for the fee to file this application?

Background and Evidence

The tenant testified that a move in inspection was not conducted at the start of the tenancy and the tenant found holes in the carpet and walls, cockroaches and a leaky drain. The tenant stated that the tenant advised the manager about the condition of the suite and except for the leak, the manager did not take any action to fix the holes or treat the apartment for cockroaches.

The tenant stated a move out inspection was conducted and the report is signed by the tenant. The report indicated that the walls and ceilings were very dirty, carpets stained

and needed replacing, drapes were broken, and the cabinets and closets were very filthy. The doors, screens and windows were covered with smoke and grime and the appliances needed replacing. This report also contained a section, signed by the tenant, authorizing the landlord to keep the security deposit towards the repair of damage identified in the report. The tenant stated that the tenant signed this report because he felt threatened by the manager and is claiming for the return of double the security deposit in addition to the following:

1.	Bed	\$50.00
2.	Bedding	\$40.00
3.	Leather Jackets	\$500.00
4.	High School Varsity Jacket	\$500.00
5.	Couch	\$200.00
6.	Canuck Gloves	\$12.00
7.	Chairs	\$100.00
8.	Microwave	\$120.00
9.	Record Player	\$50.00
10.	Cockroach Spray	\$100.00
11.	Bug Traps	\$100.00
	Total	\$1772.00

The landlord stated that the entire building had undergone massive renovations approximately three years ago. The landlord submitted into evidence, receipts and documents to support the satisfactory condition of the suite at the time the tenant moved in. The documentary evidence consists of receipts for carpet cleaning and paint touch up done just prior to the start of the tenancy. The landlord has also submitted a receipt to show that the landlord retained a portion of the previous tenant's security deposit to cover the cost of the carpet cleaning and refunded the balance as the suite was in a satisfactory condition.

The landlord stated that the problem of cockroaches started in April 2008 and not at the start of the tenancy. Treatment was conducted with limited success. At the end of the

tenancy, the dispute suite was severely infested with cockroaches which required two treatments to eradicate the pests. The landlord stated that since the tenant moved out and problem was taken care of in the dispute suite, there have been no problems in other suites. The landlord also stated that it took three months, to conduct repairs and restore the suite to a rent ready condition. The landlord is claiming loss of income for two months in the amount of \$1100.00. The landlord has submitted into evidence photographs that depict the condition of the walls, carpets, closets and appliances as dirty and in need of repair or replacement. The landlord has made a claim in the amount of \$4800.00 which consists of the following:

1.	Cleaning	\$343.65
2.	Repairs	\$76.35
3.	Painting	\$522.50
4.	Film Development	\$14.50
5.	Pest Control	\$168.00
6.	Carpet Replacement	\$1424.50
7.	Appliance Replacement	\$1150.50
8.	Loss of income for two months	\$1100.00
	Total	\$4800.00

Analysis

It is important for the claimant to know that to 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 both parties, 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 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. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Tenant's claim:

I find that the tenant did not submit into evidence any documentation to support the tenant's claim. I find that the tenant's claim in the amount of \$1772.00 does not meet all the components of the above test; hence this portion of the tenants claim is dismissed. The tenant signed the document which authorizes the landlord to retain the tenant's security deposit and hence I find that the tenant is not entitled to the return of the security deposit.

Landlord's claim:

I find that the landlord's claim for most of the above items meets all the components of the above test. As per the *Residential Tenancy Policy guideline 37*, the average useful life of an appliance is 15 years and a carpet is 10 years. Based on this guideline and the fact that the appliance and carpet were three years old, I find that the prorated value of the appliances and carpet at the time of the end of the tenancy is \$920.40 and \$997.15 respectively. I find that the landlord is not entitled to film development in the amount of \$14.50. I find that the landlord has established a claim for loss of income for two months in the amount of \$1100.00 and the filing fee of \$50.00. Based on the sworn testimony of the both parties, I find that the landlord has established a claim for damages in the amount of \$4178.05, which includes the filing fee.

The landlord has retained the security deposit and interest of \$279.46 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3898.59. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant has not proved his case; hence the tenant's application for the return of the security deposit and claim for damages is dismissed.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$3898.59**.

Dated January 29, 2009.

Dispute Resolution Officer