



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>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 a re-hearing 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. A hearing had been scheduled and held on November 28, 2008 with only the tenant in attendance. The landlord had failed to appear and the landlord's claim for damages was dismissed with a monetary order issued in favour of the tenant for the return of the security and pet damage deposit. However on December 9, 2008 the landlord/applicant requested a review hearing on the basis that the landlord could not attend the November 28, 2008 hearing due to circumstances that could not be anticipated and were beyond the landlord's control. The request for a review was granted and the matter was scheduled to be re-heard.

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 \$1,084.

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 May 20, 2007 and ended on September 30, 2008. A security deposit in the amount of \$475.00 and a pet damage deposit of \$200.00 were paid.

Submitted into evidence was the following:

- proof of service,
- a copy of the tenancy agreement,
- copies of move-in Inspection reports and move-out inspection reports.
- Photographs submitted by the landlord purporting to show damaged carpet

- Photographs submitted by the tenant showing the unit at the time of moving-in and moving out
- A copy of a move-out checklist and cleaning checklist from the landlord
- A copy of a receipt for cleaning of carpets dated September 30, from the tenant
- A copy of a note from the tenant to the landlord regarding “Things that need to be fixed in Apartment” dated October 1, 2007, noting bathroom ceiling and floor, closet doors, freezer and carpets.
- A copy of a “security deposit statement” from the landlord showing deductions from the security deposit of \$110.00 for carpet cleaning and \$100.00 for “repair” showing date paid as October 9, 2008 and a copy of the un-cashed cheque from the landlord for \$265.00.
- A copy of the tenant’s receipt for the pet damage deposit of \$200.00 dated April 30, 2007 and a copy of a receipt for the tenant’s rent May 2007 payment of \$950.00 dated April 30, 2007.
- Written testimony from a witness, dated November 30, 2008, in support of the tenant’s allegation about the condition of the unit upon moving in
- a copy of an invoice for \$1,868.21, dated December 13, 2007, for the carpeting of a different unit than the subject property
- A copy of a Notice to End Tenancy dated August 31, 2008 with effective date of September 30, 2008.
- A document titled, “Claim Breakdown Arbitration” showing the landlord’s claims
- Additional evidence from the landlord/applicant submitted after the date of the original hearing, which was not accepted as it was required to have been received and served on the respondent prior to November 28, 2008.

The landlord testified that when the unit was vacated pursuant to the Notice to End Tenancy the tenant left the unit unclean and with damages. This included \$934.00 representing 50% of the cost of damaged carpet that required replacement, \$50.00 for a broken stove knob, \$5.00 for a burned out light bulb, \$10.00 for a closet track

and \$30.00 for drywall repair. In explaining why the tenants had also received a security deposit report dated October 9, 2008 that contradicted the landlord's later claims of damage in this application, the landlord testified that the earlier form was sent by "head office". The landlord testified that, after the carpet was cleaned, it became evident that the stains could not be removed and that replacement charges were now warranted. In explaining why the receipt submitted by the landlord for carpeting related to a different suite, the landlord testified that this was merely to show what the cost of replacement carpet would be. The landlord also testified that it was now claiming a loss of rent because the rental of the suite was delayed by five days due to the repairs for damage done by the tenant, adding a loss of \$158.85. The landlord amended the claim from \$1,084.00 to \$1,242.85, plus the filing fee.

The tenant disputed all of the landlord's claims. The tenant testified that no move-in inspection was done at the time the tenants moved in and that in fact the unit was dirty and substantial damage was already there, which the landlord refused to repair. The tenant testified that the tenants did some of the repairs themselves. The tenant submitted photographs of the move-in state of the unit showing dirty stained carpets, a patio door off track, an unsightly ceiling patch and stains in the bathroom, hallway closet doors missing and worn out flooring in the bathroom. The tenant testified that the landlord conducted a move in inspection a couple of months into the tenancy. The tenant testified that although the carpets were not clean when the tenant moved in, the tenant even paid to have them professionally cleaned, which was verified by a receipt. The tenant had also submitted photos of the unit upon moving out

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 about 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. A tenant must maintain reasonable health, cleanliness and sanitary standards and repair damage to the rental unit caused by the actions or neglect of the tenant. However, the tenant is not responsible for normal wear and tear.

I find that the landlord has not proven any of the claimed cleaning or repair expenses. No invoices or other verification were provided. In regards to the landlord's explanation that the claims reflected "standard charges" imposed by the landlord, I find that this does not suffice to prove the validity of the landlord's costs, to be based on actual invoices paid by the landlord. In this regard it fails to meet the criteria for element 3 of the test for damages. Moreover, even if the receipts were submitted into evidence, the landlord did not succeed in satisfying element 2 of the test for damages. The landlord failed to prove that the tenant was responsible for the damage in violation of the Act and has only offered support material generated by the landlord but disputed by the tenant.

In regards to the landlord's claim for loss of rent, even if I accept that the unit was not rented by the first of the month, I find that there is nothing to connect this loss with the tenant. In fact, I find that, if the landlord had repair tasks to do that delayed the re-rental, it was for problems that predated this tenancy, including flooring and other flaws that the tenants had been forced to live with for the duration of their tenancy.

Based on the testimony and evidence presented during these proceedings I find that the landlord is not entitled to monetary compensation and is not permitted under the Act to retain any portion of the security deposit or pet damage deposit.

Conclusion

Accordingly, I hereby order that the landlord's application is dismissed in its entirety.

In light of the above, I am granting a monetary order in favour of the tenant for \$692.33 representing the security deposit, pet damage deposit and interest. 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.

February 2009

Date of Decision

Dispute Resolution Officer