



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 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. The landlord was claiming compensation for ceiling and drywall repairs, replacement of a hood/fan, vinyl flooring in the kitchen, blinds and an entry door, as well as costs for cleaning and garbage removal.

The applicant landlord appeared but the tenant did not appear. The landlord submitted evidence of service and supplied the Canada Post registered mail tracking number.

Preliminary Matter:

Although the landlord had listed the claims with an estimated amount for each repair or replacement item, the landlord testified that the repair work had not yet been started and that the actual verification of the costs was therefore not available. I find that some of the landlord's claims are premature. I am not able to make any findings on costs for work that has yet to be completed. Accordingly, in regards to the landlord's claims for monetary compensation for ceiling and drywall repairs, replacement of a hood/fan, vinyl

flooring in the kitchen, blinds and an entry door, I hereby dismiss this portion of the landlord's application and claim with leave to reapply. The landlord is at liberty to reapply once the work has been completed and the true amount of damages has been established with the necessary invoices and documentary support.

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

The landlord was seeking to retain the security deposit and receive a monetary order for money owed or compensation for damage and loss under the Act. The remainder of the claims in the landlord's application included \$160.00 for cleaning, \$150.00 for garbage and furniture removal and \$85.00 cost of replacing locks. 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 was caused by the tenant and
 - 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 landlord testified that the tenancy began on May 1, 2007 with rent of \$650.00, at which time a deposit was paid in the amount of \$325.00. A copy of the tenancy agreement was in evidence. The tenancy ended on October 31, 2008 pursuant to a One-Month Notice to End Tenancy for Cause, a copy of which was submitted into evidence. The landlord testified that the tenant left numerous items in the unit that needed to be removed and that the state of the unit was dirty and in disrepair. The landlord supplied photographs showing the unit upon move out and a copy of communications from the tenant confirming that the unit was not clean and that items were left. The landlord had also submitted into evidence a copy of the move-in and move out inspection reports. The landlord testified that the tenant delivered a letter dated November 26, 2008, containing the tenant's forwarding address and asking for the return of a portion of the security deposit. However, this was found to have been left by the tenant in the strata council office and was received by the landlord on December 5, 2008. The landlord then made an application to retain the deposit on December 18, 2008.

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.

Based on the testimony and the evidence before me, I find that the tenant vacated the unit leaving it in a dirty state with abandoned belongings. I find that the landlord incurred the costs being claimed of \$150.00 for garbage removal of and \$160.00 for eight hours of cleaning. I also find that landlord should be reimbursed \$85.00 for replacement the door locks and the \$50.00 cost of filing this application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation of \$445.00. I order that the landlord retain the security deposit and interest of \$333.19, in partial satisfaction of the claim and hereby issue a monetary order for the remainder in the amount of \$111.81. 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.

February 2009

Date of Decision

Dispute Resolution Officer