



# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>MNSD</u>	To 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 set to deal with an Application by the landlord for a monetary order for loss of rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. Both the landlord and tenant appeared and each gave affirmed testimony in turn.

### **Preliminary Matter**

A previous hearing on the tenant's application for damages and the return of double the security deposit was held on December 2, 2008 and a monetary order was issued in favour of the tenant. During that hearing it was also found that the rental unit was abandoned by the tenant as of July 20, 2008. The tenant's application for a rent refund for part of the month, from July 22<sup>nd</sup> to July 31, 2008, was dismissed. The findings of the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The portion of the landlord's application relating to the request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

### **Issue(s) to be Decided**

The landlord was seeking a monetary order for loss of rent for the month of August, 2008, compensation for cleaning and repairs to the suite and for fines levied during the tenancy.

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 of rent. This determination is dependant upon answers to the following question:
  - Has the landlord submitted proof that damages or loss occurred due to the other party and in violation of the *Act*?
  - Has the landlord established and proven the expenditures or specific loss of value?
  - Has the landlord taken all reasonable steps to mitigate the losses?

### **Background and Evidence**

The landlord testified that the tenancy began on August 1, 2007 and that there was no move-in inspection. The landlord testified that although the tenant had paid rent for the month of July 2008, on July 20, 2008 the landlord became aware that the tenant had vacated the suite. However, according to the landlord, any efforts to re-rent immediately were delayed by cleaning and repairs and also by the landlord's uncertainty of whether or not the tenant was gone and the tenancy completely ended. The landlord testified that it was not possible to re-rent the unit in time to establish a tenancy for August 2008. The landlord testified that the unit required four hours of cleaning at a cost of \$96.00, repainting at a cost of \$2,100.00 due to wine sprayed over the walls and ceiling, carpet replacement at a cost of \$1,326.00, door replacement of \$84.00, repairs to the toilet and drains costing \$118.11 and the landlord also had to pay noise fines that occurred during the tenancy in the amount of \$100.00. The landlord testified that the paint and carpet were ten years old, that the door was found badly damaged and off its hinges, that the toilet tank flap had to be replaced and the drains unclogged and that general cleaning was required to ready the suite. The landlord provided invoices for these tasks. The landlord testified that expenses were mitigated by the fact that the

landlord did most of the labour himself at no cost and the amount of the claims were lower because of this.

The tenant testified that the landlord denied the tenant access to the unit after July 22, 2008, but that the tenant was able to enter the suite to retrieve some personal belongings and to do some basic cleaning. The tenant testified that the difficulty in getting access to the unit, despite having paid rent to the end of the month of July impacted her ability to clean more thoroughly. The tenant testified that the landlord never actually examined the unit in a vacant state prior to the tenant moving in as the previous tenant was vacating at almost the same time. The tenant testified that when the tenant initially moved in the walls and carpets were not in good shape. The tenant submitted written testimony from the previous tenant verifying that the carpet was stained prior to the start of the tenancy. In regards to the toilet and drain repairs, the tenant stated that the toilet matter was not related to anything other than normal wear and tear and the drains were slow for the duration of her tenancy despite using drain cleaner to open them up. The tenant acknowledged that the door was damaged by the tenant. The tenant testified that she was never told at the time that the fines for noise would be levied and was of the belief that the matter had been resolved without the imposition of fines.

## **Analysis**

### **Loss of Rent and Damages**

The landlord's claim for the loss of \$1,000.00 rent for the month of August 2008, and the other claims by the landlord for monetary compensation for loss or damage to the suite, are governed by 7(a) of the Act which permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these 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. 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 respondent. 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.

It would be a violation of the Act under section 37 (2)(a) if the tenant failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear upon vacating and the tenant would also be liable for any costs or losses that flow from the tenant's failure to comply with the Act, including a loss of rent if the resulting repair work delayed re-rental.

In this instance I find that between July 20 and July 22, 2008, the landlord concluded that the tenant had abandoned the suite. According to the landlord, all of the tenant's possessions were gone and there was a finding of fact by a Dispute Resolution Officer presiding at the previous hearing held on December 2, 2008, that the suite was abandoned as of July 20, 2008.

The expectation would be that efforts to re-rent to minimize the landlord's losses would commence immediately. I find that, with the advantage of having received payment for the entire month of July, the landlord had possession of a vacant suite for eleven days during which the rental suite could have been worked on and marketed with a view to finding a future tenant for August 1, 2008. Such efforts may or may not have been successful. The fact is that, if the effort succeeded, the landlord would not have suffered a \$1,000.00 loss of rent and if the effort did not result in success, the landlord still had the option of claiming a \$1,000.00 loss of rent against the tenant. Unfortunately, there is no way to know what would have happened because, according to the landlord's testimony, nothing was done until August 2008. I do not find the landlord's stated reason that this was due to his not being sure that the tenant was gone and the tenancy ended to be convincing. In order to have established that the suite was abandoned and justify taking possession of the unit, the landlord must have adequately proven to the previous dispute resolution officer that there was no expectation that the tenant would return. I find that the landlord can not suddenly take the opposite position and argue it before me now. Although an eleven day window to re-rent would present a challenge, I cannot make the presumption that it would have failed, particularly when a party neglected to fulfill the statutory obligation to take all reasonable measures to mitigate.

In regards to the damages claimed, it is clear that the suite had some damage and that the landlord was left with tasks that needed to be done to prepare the rental unit for a new occupant. However, the question is; What was the tenant's role in this matter? In order to satisfy element 2 of the test for damages, it must be established that the tenant's violation of the Act caused the expenditure.

In regards to the paint and carpet, for which the landlord has claimed \$2,100.00 and \$1,326.00, respectively, based on the evidence, I find that these finishes were already at, or beyond, their usual life expectancy. Moreover, I find that substantial damage likely pre-existed this tenancy. In regards to the \$118.11 plumbing repairs, I find that the landlord has not established that this tenant was responsible. I find that toilet components are subject to wear and tear and narrowed drains can take years to develop to the point of an actual stoppage. In regards to the issue of cleaning, other than producing a statement marked "*Move out clean of condo & deck*" for \$96.00, with no further detail, the landlord neglected to provide proof that the condition of the unit fell

short of the state it was in when the tenancy started. The claims discussed above all offer insufficient support to meet element 2 of the test for damages.

In regards to the cost of replacing the door, I find that the landlord is entitled to \$84.00.

In regards to the claim for fines levied against the tenant by the condo corporation, I find that the landlord is entitled to \$100.00.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$234.00 comprised of \$84.00 for the door, \$100.00 for the fines and the \$50.00 fee paid by the landlord to file this application. I grant the landlord a monetary order under section 67 of the *Act* for \$234.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

February 2009

Date of Decision

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Dispute Resolution Officer