



Dispute Resolution Services

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

DECISION

Dispute Codes:

<u>MNR</u>	Unpaid Rent or Utilities
<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 for the month of November 2008, compensation for damage to the unit and to retain the security deposit. Both the landlord and tenant appeared and each gave affirmed testimony in turn.

Preliminary Matter

At the outset of the hearing the parties confirmed that only a portion of the landlord's evidence was served on the respondent tenants. The parties also confirmed that none of the tenant's evidence was served on the applicant landlord.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must

be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the Dispute Resolution Officer must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. Even if the Dispute Resolution Officer decided to accept the evidence, the other party must still be given an opportunity to review the unseen evidence before the application can be heard. This would necessitate a determination about whether or not the matter should be adjourned to a future date to allow service of the evidence, and would require submissions on the subject from both parties,.

In the case before me, both parties stated that they misunderstood the process and had mistakenly submitted their evidence only to the Dispute Resolution file and not to the other party. I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..*”

Given the above, I decline to accept or consider any evidence that was not properly served on the other party. However, I will still consider the twelve photographs that were submitted into evidence by the landlord and properly served on the respondent, as well as verbal testimony from both parties.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent of \$983.00 for November, 2008 and \$983.00 rental loss for December 2008 as well as damages for cleaning and repairs totaling \$1,114.00.

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?

The burden of proof is on the landlord.

Background and Evidence

The landlord testified that the tenancy began on September 15, 2006, at which time a security deposit was paid in the amount of \$375.00. The tenancy ended on October 30, 2008. The landlord testified that although there was no move-in inspection report or move-out inspection report, as required by the Act, the unit was in good repair and clean condition when the tenant's moved in. The landlord testified that the tenant suddenly moved out without giving any notice leaving the unit in bad condition. The landlord testified that because of the lack of notice by the tenant, the landlord was unable to find another tenant for November 1, 2008 and despite advertising, the unit was not re-rented during the month of November 2008 or December 2008.

The landlord was claiming reimbursement for \$100.00 for garbage removal, \$300.00 for cleaning costs and \$500.00 for repairs. The landlord submitted a photograph of the exterior of the unit showing outdoor furniture allegedly left by the tenants and photographs of the interior showing a stained carpet, messy counter and cupboards with items left in them, allegedly abandoned furnishings and possessions, double locks installed on two different doors allegedly by the tenant, soiled-looking shower floor and a stovetop and oven that appear not to have been cleaned. The landlord testified that the seven-year-old carpet smelled bad and had to be replaced. The landlord also testified that the tenants left some of their son's childhood drawings and other mementos in the suite that the landlord has stored in safekeeping for the tenants to retrieve if they wish to do so.

The tenant testified that proper written notice was given to the landlord through the landlord's mail slot on September 25, 2008 and that the tenant phoned the landlord to

confirm that it was received. The tenants testified that the tenants moved out on October 30, 2008 a verbal agreement that the security deposit would be used to pay outstanding utilities with the remainder to be refunded to the tenant. The tenant also testified that the forwarding address was hand delivered to the landlord in the form of a business card. The tenant testified that during the tenancy the landlord imposed an illegal rent increase, required the tenants to sign a new lease and insisted on the tenants giving post-dated cheques in advance.

The tenant testified that the unit was thoroughly cleaned and returned in the same state of repair that it was when the tenancy started.

The tenant testified that the photographs were misleading and some were staged by the landlord. The tenant testified that furniture items shown in the outdoor scene did not belong to the tenant. The tenants testified that the carpet stain was created by some kind of leak and that this was reported to the landlord who did nothing about it. The tenant testified that cupboards were not left with any items left in them. The tenant stated that the tenant did not recognize the furnishings and possessions shown in some of the photos. The tenant testified that double locks were already installed on two different doors when they moved in. In regards to the soiled-looking shower floor, the tenant testified that the finish was worn and the coating could not be cleaned off and that the stains on the stovetop were rust that could not be removed.

Analysis

The landlord's claim for the loss of rent and 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

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. The tenant would also be liable for any costs that flow from the tenant's failure to comply with the Act, such as loss of rent if the resulting repair work delayed re-rental.

In this instance I find that the tenant vacated the unit and failed to comply with section 45(1) which permits a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. I find that the landlord had genuinely attempted to mitigate the loss by advertising but still incurred a loss of rent for the month of November in the amount of \$983.00. I dismiss the landlord's claim for loss of rent for the month of December 2008.

I find that the tenant left the unit in a condition that required some additional cleaning in violation of the Act. I find that the landlord is entitled to cleaning and garbage removal costs and set this amount at \$150.00.

I find that the tenant would only be liable for utilities predating the tenant's departure for an estimated amount of \$100.00.

In regards to the remainder of the landlord's claims for damages and loss, I note that the landlord did not comply with the Act by arranging a move-in and move-out condition inspection report and there is no way to verify the "before and after" condition of this unit. Therefore I find that the landlord has failed to satisfy all elements in the test for damages. I find that the remainder of the landlord's application must be dismissed.

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 \$1,283.00 comprised of \$983.00 loss of rent, \$150.00 for cleaning and garbage removal, \$100.00 for estimated utilities and the \$50.00 fee paid by the landlord to file this application. I order that the landlord retain the security deposit and interest of \$386.90 in partial satisfaction of the claim leaving a balance due of \$896.10.

Conclusion

I hereby grant the Landlord a monetary order under section 67 of the Act for \$896.10.

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

Dispute Resolution Officer