



# Dispute Resolution Services

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

## **DECISION AND REASONS**

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

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for cleaning, painting, removal of abandoned items and other expenses related to re renting the rental unit, pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

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.

The tenancy started on July 01, 2008 for a fixed term of 12 months. The tenant moved out on October 31, 2008 and made arrangements for new tenants to take over the lease. The landlord is applying for costs related to re renting the rental unit.

### **Issues to be decided**

Is the landlord entitled to a monetary order for:

- Cleaning, painting and other costs to restore the rental unit to a condition suitable to be re rented.
- To retain the security deposit in satisfaction of the landlord's claim?
- Compensation for loss under the Act and the tenancy agreement?
- The fee to file this application.

### **Background and Evidence**

The landlord testified that on October 26, 2008, the tenant sent an email message to the landlord asking that the landlord contact the tenant as soon as possible. The tenant

advised the landlord that the tenant would be moving out immediately and would be looking for a new tenant to take over the lease. The landlord met with the new tenants on November 03, 2008 and stated that during the walk through of the rental unit with the new tenants, the landlord noted that the suite needed cleaning. The landlord stated that the tenant had not returned the keys to the suite and had abandoned two couches on the property. The landlord stated that the new tenants agreed to move in on November 05, 2008 and subsequently changed their minds and moved in on November 10, 2008. The landlord stated that the landlord was unable to contact the tenant to make an arrangement to conduct the move out inspection and did so on November 05, 2008 without the tenant. The landlord submitted into evidence a copy of the tenancy agreement, move in and move out inspection reports, move in report for the new tenant dated November 05, 2008, invoices for cleaning, new locks and removal of furniture and copies of emails that were exchanged between the landlord and tenant.

The landlord is claiming the following costs:

1.	Loss of income for 9 days	\$500.00
2.	Painting	\$150.00
3.	Cleaning	\$75.00
4.	Replace entry fob	\$36.75
5.	Clean Carpets	\$94.50
6.	Remove abandoned items	\$95.00
7.	Change locks	\$105.92
8.	Strata move in fee	\$100.00
9.	NSF fee	\$30.00
10.	Credit Reports	\$50.00
11.	Liquidated damages	\$850.00
	Total	\$2087.17

The tenant testified that the tenant had left voice mail messages for the landlord on October 22 and October 23 regarding the early end to the tenancy. The tenant also stated that the tenant advertised and showed the rental unit to about 20 -25 prospective tenants and provided the landlord with three serious candidates for the landlord's approval. The tenant showed the suite to the new tenants on or about October 27, 2008, advised the landlord that the tenant was moving out on October 28, 2008 and requested that the landlord conduct a move out inspection. The landlord stated that a move out inspection would be conducted after the tenant moved out and declined to do so at the time of the tenant's request. The tenant stated that the suite was cleaned prior to moving out on October 28, 2008 and disputed the landlord's claim for the cost of cleaning the suite. The tenant also stated that the new tenants advised him that they would move into the rental unit on November 03, 2008. The tenant did not dispute the landlord's claim for the cost of removal of abandoned items and for cleaning the carpet but did not agree with the move in fee, credit check fee and NSF fee.

### **Analysis**

It is important for the parties to know 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**

- 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 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.

Regarding the landlord's claim for loss of income for nine days in November, the tenant stated that the new tenants indicated to the tenant that they would move in on November 03, 2008. The landlord stated that the new tenants moved in on November 10, 2008. Since the landlord is claiming loss of income for nine days, the burden of proof is on the landlord to support his claim by providing evidence to substantiate the date the new tenants moved in and/or the amount of rent the new tenants paid for the month of November 2008. Since the landlord did not provide this evidence and the tenant agreed to a loss of income in the amount of the equivalent of rent for three days, I find that the landlord is entitled to a loss of income for November, in the amount of \$170.00 which is the equivalent of rent for three days.

The landlord has not submitted any evidence to support the landlord's claim for painting costs in the amount of \$150.00. Hence this portion of the landlord's claim is dismissed.

The landlord has submitted into evidence a copy of an email dated November 14, 2008 from the landlord to the tenant, in which the landlord states that the tenant left the suite fairly clean but the kitchen was not to the satisfaction of the new tenants. The tenant also stated that the suite was cleaned prior to moving out and the landlord has not submitted evidence by way of photographs to support the landlord's claim. Hence I find that the landlord is not entitled to cleaning costs in the amount of \$75.00.

The landlord has submitted into evidence a copy of a receipt of payment made by the tenant in the amount of \$36.75 on November 20, 2008 towards the entry fob. Hence the landlord has already received payment for this item of the landlord's claim.

The landlord's claim for carpet cleaning, removal of abandoned items, changing locks and the NSF fee meets all the components of the above test and hence I find that the landlord is entitled to the cost of these four items in the total amount of \$325.42.

The landlord has not provided any evidence to support the landlord's claim of \$100.00 for a strata move in fee; hence this portion of the landlord's claim is dismissed.

Section 15 of the *Residential Tenancy Act* states a landlord must not charge a person anything for accepting or processing an application for tenancy or for investigating the applicant's suitability as a tenant. Accordingly the landlord's claim for \$50.00 for credit checks is dismissed.

*Residential tenancy Policy Guideline #4* states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance, the damages payable in the event of a breach of the tenancy agreement. In this particular case, the tenant did not breach the tenancy agreement as the tenant found a tenant to complete the remainder of the tenant's lease. The landlord did not incur costs to find a tenant and did not suffer any loss of income. I find that the imposition of liquidated damages is not applicable in cases such as this where there was no breach of the agreement and no ending of the tenancy. I further find that, even in a situation where there was a breach, the fact that the landlord could not establish any tangible loss or expenditures, would make liquidated damages punitive and this is not sanctioned by the Act. Accordingly, the landlord has not established a claim in the amount of \$850.00 for liquidated damages and this portion of the landlord's application is dismissed.

The landlord has established a claim in the total amount of \$495.42. I order that the landlord retain this amount from the security deposit and interest of \$856.83 in satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$361.41. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant an order under Section 67 of the *Residential Tenancy Act*, in the amount of **361.41**. The landlord must bear the cost of filing this application.

Dated February 06, 2009.

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Dispute Resolution Officer