



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, MNDC, FF.*

Introduction

This hearing dealt with applications by the tenant and the landlord, pursuant to the *Residential Tenancy Act*. The tenant applied for the return of the security deposit pursuant to Section 38. The landlord applied to recover the cost of repair to the unit pursuant to Section 67. Both parties applied to recover the cost of filing the Application for Arbitration pursuant to Section 72.

The tenancy began on November 01, 2006 and ended on October 31, 2008. The rent was \$1435.00 and the tenant paid a security deposit of \$700.00 on November 01, 2006.

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.

Issues to be decided

Is the tenant entitled to the return of double his security deposit and the filing fee?

Is the landlord entitled to a monetary order for damages to the rental unit and if so in what amount and for the fee to file this application?

Background and Evidence

Based on the sworn testimony of both parties the agreed upon facts are as follows:

The tenant moved into the rental unit on May 01, 2006 as a sub tenant and entered into a tenancy agreement with the landlord on November 01, 2006. The landlord resides out of the country, but was available to sign the tenancy agreement on that day. The agreement was signed by both parties inside the rental unit. A move in inspection was not conducted at that time and the tenant did not indicate to the landlord the existence of any problems with the condition of the suite.

The landlord did not retain any part of the security deposit of the previous tenant. The tenant gave the landlord the appropriate notice and moved out on or about October 27,

2008. The landlord visited the rental unit on October 30, 2008 and found that it had not been cleaned, one wall was painted green and there were stains on the carpet. The landlord spoke to the tenant by phone and both parties agreed that the conversation was heated. On November 01, 2008, the landlord met the tenant's spouse in the lobby of the apartment building and received the keys and a forwarding address in writing. The tenant contacted the landlord by email on November 14 and 17 requesting an update on the return of the security deposit. The landlord replied on November 28, 2008 providing the tenant with a breakdown of expenses he had incurred to restore the suite to a suitable condition.

Tenant's Application:

The tenant testified that at the start of the tenancy, the apartment was dirty and the walls were in poor condition. The tenant could not recall if the carpet had stains. The tenant stated that the tenant moved out prior to the last day of the month to accommodate the landlord's plans to renovate the rental unit. The tenant recalled having a phone conversation with the landlord on October 30, 2008, but disagreed with the landlord's account of the conversation. The tenant stated that due to moving out prior to the last day of the month, the tenant did not have time to clean the unit and agreed to split the cost of the cleaning with the landlord. The tenant admitted to painting one wall green but denied having agreed to pay \$50.00 toward materials for repainting the wall. The tenant also stated that he did not agree to share the cost of cleaning the carpets, as the landlord was considering replacing the carpets. The tenant was unsure of how the carpet got stained with varnish and stated that the stains may have been present prior to the start of the tenancy. The tenant is claiming the return of double the security deposit.

Landlord's Application:

The landlord testified that on October 30, 2008, he had visited the apartment with a decorator. During that visit, he phoned the tenant and discussed the green wall, carpet stains and cleaning of the apartment.

The landlord testified that the tenant agreed to pay \$50.00 towards painting of the green wall, \$50.00 for cleaning the apartment and \$25 for stain removal for a total of \$125.00. The landlord also stated that the tenant was hostile and the landlord demanded an

apology during that conversation. The landlord stated that on November 03, 2009, the contractor hired to remove the stains on the carpet informed the landlord that the stains could not be removed and that they were the footprints of furniture that had been varnished.

On November 28, 2008, the landlord wrote to the tenant advising him of the problem with the carpet and attached a photograph and a spreadsheet that detailed the breakdown of the claim against the security deposit. The letter explained that the stains were not removable and the only option that the landlord was left with was to replace the carpet. The landlord provided an estimate in the amount of \$1240.00 and offered to cover 50% of this amount to replace the five year old carpet. The landlord's claim is as follows:

1.	Carpet replacement	\$620.00
2.	Cleaning	\$50.00
3.	Materials to paint wall	\$50.00
4.	Stain removal	\$25.00
	Total	\$745.00

Analysis

Tenant's application:

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit.

In this case, I find that the landlord did not return the security deposit to the tenant nor did he not make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Hence, pursuant Section 38 (6) of the *Residential Tenancy Act*, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

The tenant testified that the tenant agreed to pay \$50.00 towards the cleaning costs. Hence, I find that the tenant is entitled to the return of the security deposit of \$700.00 minus \$50.00 (\$650.00), plus interest (\$21.63) plus an additional amount equal to the amount of the base security (\$650.00) for a total of **\$1321.63**.

Landlord's application

It is important for the claimant to know that to 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 other party. 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.

In this case, I find that since the tenant did not report the stains on the carpet to the landlord at the start of the tenancy and the previous tenant received the full amount of the security deposit, it is more likely than not, that the varnish stains were created sometime during the tenancy. The landlord is claiming 50% of the costs the landlord has incurred in the attempt to remove the stains and subsequently to replace the carpet

when it was determined the stains were permanent. The landlord is also claiming the cost of materials to repaint the green wall.

I find that the landlord has established a claim in the amount of **\$695.00** which is what the landlord is claiming and includes \$620.00 for carpet replacement, \$25.00 for stain removal and \$50.00 for paint.

Conclusion

The tenant has established a claim in the amount of **1321.63**.

The landlord has established a claim for **\$695.00**.

Hence, I grant the tenant under Section 67 of the *Residential Tenancy Act*, a monetary order in the amount of the difference of **\$626.63**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Both parties must bear the cost of filing their own application.

Dated February 26, 2009.

Dispute Resolution Officer