



# Dispute Resolution Services

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

## **DECISION AND REASONS**

### **Dispute Codes:**

*MND, MNSD, FF, MNDC*

### **Introduction**

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act* for a monetary order to retain the security deposit pursuant to Section 38 and to recover the filing fee for this application pursuant to Section 72. The landlord also applied for compensation under the Act pursuant to Section 67, for loss of income for the first half of September 2008, due to the tenant ending the tenancy without adequate notice and for costs to clean and repair the rental suite.

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 September 01, 2007 and ended on August 31, 2008. In an earlier proceeding dealing with an application by the tenant, a decision dated December 10, 2008, was rendered finding that the Landlord had contravened section 38 of the Act. The landlord was ordered to pay the tenant double the security deposit plus interest on the base amount, under section 38 of the Act. Today's hearing and my decision on the matters before me today are independent and not related to this previous claim. The landlord acknowledged that the issue of the security deposit was already dealt with and hence this part of the landlord's application to retain the security deposit is dismissed. The landlord has not complied with the order to this date. The landlord testified that the landlord now realizes that a claim for dispute resolution is required under the Act in order to pursue damages and is therefore making this application under section 67 of the Act.

**Issues to be Decided**

Is the landlord entitled to loss of income for September, to recover the cost of filing this application and the cost for the cleaning and repair of the suite? Did the tenancy end for landlord's use of property?

**Background and Evidence**

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

The tenancy started on September 01, 2007 for a fixed term of one year with a monthly rent of \$2400.00. However, on the tenancy agreement the appropriate boxes, regarding the tenant would move out at the end of the fixed term, were not initialed by both parties and the tenant and landlord agreed that the tenancy would continue on a month to month basis after the fixed term was complete on August 31, 2008. The tenant paid a security deposit of \$1200.00. The landlord stated that on August 11, 2008, the landlord called the tenant to advise the tenant that the landlord's close family would be returning to live in the suite and that the tenant would be required to move out on or before August 31, 2008. The tenant and landlord discussed the issue and the landlord agreed to end the tenancy as per section 49 of the *Residential Tenancy Act* which states that the landlord may end the tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit, by giving the tenant two months notice. The landlord has submitted into evidence a letter that confirms this arrangement. The landlord stated that on August 25, 2008 the tenant gave the landlord, verbal notice to move by August 31, 2008. Neither the tenant nor the landlord provided the other party with a written notice. The new tenants moved in on September 15, 2008 and the landlord is claiming damages for loss of income for the first two weeks of September in the amount of \$1240.00.

The tenant moved out on September 01, 2008. On that day, the landlord was present in the unit and stated that she pointed out to the tenant that the suite needed cleaning and repair. However, the landlord stated that she did not perform a move out inspection, due to the tension that was present between the tenant and the landlord. The tenant stated that the landlord did not mention anything about the condition of the suite at the time the tenant was moving out.

The tenant has submitted into evidence letters from the co tenants which speak to the condition of the rental unit as being satisfactory, when they left it. One letter states that the tenant asked the landlord to conduct a move out inspection but the landlord declined saying “everything looked fine, but the carpet needed cleaning”. The landlord is claiming costs for cleaning and repairs and has provided receipts for the same. The tenant stated that the fireplace and garberator were problematic from the start of the tenancy and the landlord was advised of the situation. The landlord’s spouse attempted to fix the garberator and hence was aware that it was not functioning properly. The landlord has submitted into evidence, a receipt dated August 20, 2008 for the purchase of a garberator. The tenant stated that the door of the master bedroom did not have a door stop and when a window was open, the door would often slam against the wall causing damage to the wall.

The landlord is claiming the following:

1.	Loss of income for September	\$1240.00
2.	Cleaning	\$250.00
3.	Carpet cleaning	\$210.00
4.	Wall repair	\$41.68
5.	Servicing of fireplace	\$84.99
6.	Replace garberator	\$262.08
7.	Filing Fee	\$50.00
	<b>Total</b>	<b>\$2138.75</b>

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenancy ended for landlord’s use of property and the landlord gave the tenant, a verbal Section 49 notice on August 11, 2008. Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end a tenancy under Section 49 (landlord’s use of property) is entitled to receive from the landlord on or before the effective date of the landlord’s notice, an amount that is the equivalent of one month’s rent payable under the tenancy agreement.

Section 50 states that if a landlord gives a tenant notice to end tenancy under Section 49, the tenant may end the tenancy early by giving the landlord at least ten days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. This ten day notice to end tenancy early does not affect the tenant's right to compensation under Section 51. However, this is the landlord's application and hence this decision will not include the tenant's right to compensation for the Section 49 notice to end tenancy.

The tenant failed to give the required ten day notice to end tenancy early, by giving only six days notice. Hence I find that the landlord is entitled to the equivalent of rent for four days in the amount of \$320.00.

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 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 address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord's claim for carpet cleaning meets all the components of the above test. Pursuant to Section 32 (4) of the *Residential Tenancy Act*, a tenant is not required to make repairs for reasonable wear and tear. Based on the sworn testimony of both parties and the documentary evidence submitted by both parties, I find that the repairs conducted by the landlord were as a result of wear and tear and hence I find that the landlord has not established a claim for cleaning, wall repair, fireplace servicing and repair and replacement of the garberator. I find that the landlord is entitled to \$210.00 for carpet cleaning, \$320.00 for loss of income and \$50.00 for the filing fee for a total of \$580.00.

### **Conclusion**

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the amount of **\$580.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 23, 2009.

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Dispute Resolution Officer