



# Dispute Resolution Services

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

## Re Hearing Decision

### Dispute Codes:

MND, MNDC, FF

### Introduction

This is a re-hearing on the landlord's application for dispute resolution submitted September 29, 2008 claiming damages of \$4,490.00 against the tenant. This matter was initially heard on November 18, 2008 in the tenant's absence and the landlord was successful. However, on December 1, 2008 the tenant requested a review consideration and in a decision dated December 19, 2008, which was mailed to both parties, a rehearing on the matter was granted and the landlord's application was then scheduled to be re-heard by written submission on March 19, 2009. Both the landlord and the tenant were instructed to submit any evidence upon which they intended to rely to my attention with the file number clearly marked and to serve the same to the other party.

By way of background, I note that a previous hearing was held on the tenant's application on July 2, 2008 and the landlord had been ordered pay monetary compensation to the tenant as required for a Two-month Notice for Landlord's Use dated January 31, 2008. The landlord was also ordered to pay double the security deposit as the deposit had not been returned within 15 days as required under the Act. It was found by the Dispute Resolution Officer that the tenant had moved out of the unit prior to April 1, 2008 for landlord's use.

The Landlord's subsequent application claiming for damages was submitted on September 29, 2008 and was initially heard on November 18, 2008. The landlord had requested a monetary order for damage to the unit/site/property and indicated that *"the former tenant mentioned on the back of this form has caused an excessive damage to the unit costing me the above amount, I kept all the photos and records & the damage deposit to this date*

*which is under dispute.*” The amount being claimed by the landlord for the alleged damages was shown as \$4,490.00.

### **Preliminary Matter**

Although the landlord’s application has indicated that “*the damage deposit to this date*” had been kept because it is “*under dispute*”, I find that the matter of the deposit was already determined in the tenant’s favour during the hearing held on July 2, 2008 on the tenant’s application, for which a monetary order was issued against the landlord for double the deposit and for compensation required under section 51. The security, (or damage) deposit is no longer under dispute and is not a matter that is within my authority to determine during these proceedings. The matter before me pertains solely to the landlord’s claims for damages and loss against the tenant.

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

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 which is dependant upon answers to the following questions:
  - Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?
  - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities:
    - a) that the damage or loss was caused by the actions of the tenant and in violation of the *Act*
    - b) a verification of the actual costs to repair the damage
    - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The tenancy ended on or about March 31, 2008. Compensation was already granted to the tenant, against the landlord, for the return of the security deposit and the required compensation relating to the Two-Month Notice for Landlord's Use that ended the tenancy. The landlord subsequently made an application for damages to the unit in the amount of \$4,490.00 which is before me today.

Subsequent to the Review Consideration and for the purpose of the re-hearing, a request for written evidentiary submissions was mailed to each party. However, no submissions were received from the landlord in support of the landlord's claim.

### **Analysis**

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such 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. The party claiming the damage/loss bears the burden of proof and the evidence must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists, and happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
2. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

3. 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 mitigate the damage or losses that were incurred.

I find that the landlord has not offered sufficient proof to justify the monetary claim or any portion thereof. In this regard it fails to meet the criteria all of the required elements in the test for damages.

Based on evidence submitted for these proceedings I find that the landlord is not entitled to any monetary compensation. I further find that the landlord has no valid basis under the Act for relying on these current proceedings to avoid complying with earlier monetary orders issued in favour of the tenant, which should be paid forthwith.

### **Conclusion**

Accordingly, I hereby order that the landlord's application is dismissed in its entirety without leave to reapply.

March 2009

Date of Decision

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Dispute Resolution Officer