



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNR</u>	For unpaid Rent or Utilities
<u>MNSD</u>	To keep all or part of the security and pet damage deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

### Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain the security deposit in satisfaction of the claim.

The record from Canada Post indicates that the tenant was served by registered mail and signed for the item on February 6, 2009.

\*\* However, the tenant did not appear.

\*\*\*Both the landlord and tenants attended and each gave affirmed testimony in turn.

### Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order in compensation for money owed or compensation for damage and loss under the *Act* including cleaning costs and loss of rent for a total claim of \$4,025.00.

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 and to retain the security deposit. This determination is dependant upon answers to the following questions:
  - 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 and verifying:
    - that the damage or loss was caused by the actions of the tenant and in violation of the *Act*
    - the actual costs to repair the damage
    - that the landlord fulfilled the obligation to do what ever was reasonable to mitigate the costs

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

### **Background and Evidence**

The tenancy began on May 20, 2007 and ended on December 25, 2008. A security deposit in the amount of \$475.00 and a pet damage deposit of \$200.00 were paid. Submitted into evidence was the following: proof of service, photographs submitted by the landlord purporting to show damages; a copy of a typed notice from the tenant to the landlord dated December 12, 2008 stating that the tenant would be moving by December 25, 2008; and a list of damages and costs.

The landlord testified that the tenancy began as a fixed term tenancy &&&& beginning on October 1, 2008 and was to end on March 31, 2009. The tenant paid a security deposit of \$575.00 and the rent was set at \$1,150.00. No copy of the tenancy agreement was submitted into evidence. The landlord testified that on December 15, 2008 the tenant gave written notice to vacate by placing a note in the landlord's mailbox. The landlord testified that the tenant left the unit unclean, with items left to dispose of and that damage had been caused by the tenant.

The landlord submitted 9 photos showing damaged and soiled walls, bi-fold doors removed, chairs and toolbox left behind and dirt on the floor. The landlord also submitted a list of claims including: \$25.00 repair cost for damage to the wall; \$25.00 repair cost for damage to the door and trim; \$15.00 for stains on the wall and baseboard; \$15.00 for broken door and damage to drywall; \$30.00 for garbage; \$50.00 for carpet stains and dirt; \$20.00 for dirt on the floor; \$10.00 for an unreported leak under the sink; \$20.00 for a cupboard door in bathroom that was ripped off its hinges; \$25.00 for closet doors ripped off; \$400.00 for 20 hours of cleaning; 27.79 for the costs of mailing hearing packages and \$50.00 for filing the application. The total claim for damages was \$712.79. The landlord also noted damage to the lawn, oil stains in the carport and that the tenant had left the gas fireplace on after departing. No estimates or invoices supporting the amounts being claimed were submitted into evidence. The landlord testified that, although no move in inspection report was completed, the unit was newly renovated and the move-out inspection was conducted in the tenant's absence. The landlord testified that many hours were spent cleaning the walls, floors, fixtures and appliances.

The landlord was also claiming the loss of three months rent at \$1,150.00 per month totaling \$3,450.00. The landlord testified that attempts to re-rent the unit were initiated on December 16, 2008 and that advertisements were placed on Craig's List and in the local newspaper. Copies of the ads or invoices were not submitted into evidence. The landlord testified that the landlord suffered a loss of rent for the month of January 2009 as a tenant could not be found until February 1, 2009 and also testified that the landlord had to lower the rental rate from \$1,150.00 to \$850.00 to get the unit rented. The landlord was seeking a monetary order for \$4,025.00 which included retention of the security deposit of \$575.00.

### **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, pursuant to section 7. 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

In this instance, the burden of proof is on the claimant, to prove damage/loss which stemmed directly from a violation of the agreement or the Act by the tenant. Then 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.

#### Loss of Rent

In regards to the landlord's claim for three months loss of rent to the end of the fixed term tenancy, I find that the landlord has neglected to submit into evidence a copy of the tenancy agreement showing the basis for the landlord's claim. In the absence of an

agreement, section 45 of the Act still requires that a tenant provide one month's written notice and it must be given the day before the day rent is due. In this instance with a written notice dated December 12 and served on December 15, 2008, in order to comply with the Act, the effective date to end the tenancy would be January 31, 2009 or later. The landlord has an obligation to mitigate under the Act and although no evidence of the advertisements were submitted, I accept the landlord's testimony that reasonable efforts were made to re-rent. Accordingly, I find that this claim by the landlord meets all elements of the test for damages including element four. I find that the landlord is entitled to compensation for the loss of rent for the month of January 2009 in the amount of \$1,150.00

In regards to the loss of rent of \$300.00 per month for the month of February and March 2009, due to a reduced rental rate, I find that the landlord did not submit copies of both the original and the new fixed-term tenancy agreement to prove this loss. I find that the landlord has failed to meet elements two and three of the test for damages and this portion of the claim is dismissed.

### Damages

In regards to the damage claim, I note that section 32 of the Act contains provisions about obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation. A tenant must maintain reasonable health, cleanliness and sanitary standards and repair damage to the rental unit caused by the actions or neglect of the tenant. However, the tenant is not responsible for normal wear and tear.

I find that the landlord has established that damage and unclean conditions existed in the unit when the tenant vacated which meets element one of the test for damage and loss. However, it must be proven that the tenant caused the loss by violating the Act.

The absence of a move-in/move-out inspection report, required under section 23 and 35 of the Act, affects the landlord's ability to meet element 2 of the test for damages. In addition, the landlord has not provided invoices for the costs incurred to meet element three of the test. I find that a claimant's testimony does not suffice to prove the validity of the landlord's costs. However, I can accept the landlord's evidence that, on a balance of probabilities, the unit was likely clean and presentable when the tenant moved in and I find that the photographic evidence verified that the tenant failed to properly clean the unit upon vacating. It is clear that the landlord did spend time cleaning up the unit and I find that the landlord is entitled to \$200.00 in compensation for the cleaning and an additional \$40.00 for the garbage removal.

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to monetary compensation of \$1,440.00 comprised of \$1,150.00 loss of rent, \$200.00 cleaning costs, \$40.00 for garbage removal and \$50.00 for the cost of the application. I order that the landlord retain the tenant's security deposit and interest and interest of \$576.16 in partial satisfaction of the claim and issue a monetary order for the remainder of \$863.84.

### **Conclusion**

Based on the evidence and the testimony, I hereby issue a monetary order in favour of the landlord for \$863.84. This order must be served on the landlord by the tenant and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

March 2009

Date of Decision

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Dispute Resolution Officer