



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

MNR Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

#### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damages stemming from the tenant's early termination of the fixed-term tenancy, including carpet cleaning costs due to damage by tenant's dogs, utility costs and the difference in rent between the tenancy agreement and the monthly amount being paid by new tenants moving in to the unit on February 1, 2009.

Both the landlord and tenants were represented and each gave affirmed testimony in turn.

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

The landlord was seeking a monetary order against the tenant for carpet-cleaning costs, loss of rent due to the tenant ending the tenancy one month prior to the end of the fixed term tenancy for a total claim of \$1,098.52.

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 rental arrears owed, damages or loss of

rent. This determination is dependant upon answers to the following questions:

- Has the landlord submitted proof that the specific amount of rent being claimed is validly owed by the tenant to this landlord?
- Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?
- Has the landlord met the requirement under section 7(2) of the Act to do whatever is reasonable to minimize the damage or loss?

### **Background and Evidence**

This tenancy began as a twelve-month fixed term tenancy signed on May 30, 2008 to run from July 1, 2008 until June 30, 2009, with rent set at \$1,350.00 per month. A security deposit of \$675.00 and pet damage deposit of \$675.00 were paid. The tenancy was terminated, prior to the expiry date by the tenants on November 1, 2008.

The landlord submitted a large number of documents including a copy of a previous decision dated January 15, 2009 for a hearing held on the landlord's application on January 14, 2009. The Dispute Resolution Officer had found that the tenants had violated the tenancy agreement by terminating the tenancy earlier than the expiry date and were therefore liable to compensate the landlord for damages that resulted. In that decision, the landlord received a monetary order for damages and losses incurred, including general cleaning costs, advertising costs and three-months loss of rent. The landlord was ordered to retain the tenant's security deposit in the amount of \$675.00 to set off the claim. However, the Dispute Resolution Officer specifically declined to determine the

matter of the tenant's pet damage deposit which was still being held by the landlord at the time of the hearing and this remains unresolved to date.

The landlord testified that when the tenants vacated on November 1, 2008, the carpet in one room was found to be stained and soiled by the tenant's dogs. The landlord testified that the carpeting required specialized cleaning at a cost of \$78.75 and the landlord included a copy of the invoice for this cleaning dated January 15, 2009. In answer to the question of why the carpet was left not cleaned for two and a half months, the landlord stated that it was due to financial considerations. The landlord testified that the carpet was not new and was likely over 10 years old. The landlord testified that no move-in or move-out condition inspection reports were completed for the tenancy.

In regards to the carpet issue, the tenants disputed the claim. The tenants testified that the carpets were already stained at the start of the tenancy and that the tenant's dogs were not responsible for the state of the carpeting.

The landlord testified that a term of the tenancy agreement included the tenant's responsibility to pay for both the gas and the hydro costs for the duration of the agreement. The landlord testified that the premature ending of the tenancy in violation of the agreement, resulted in the landlord incurring costs for utilities for the vacant unit while trying to re-rent. The landlord testified that although the tenants paid the utility bills to the end of their tenancy and terminated their accounts with both BC Hydro and Terasen Gas, the landlord was required by these providers to connect the utilities and transfer the accounts into the landlord's name to maintain service to the unit. The landlord testified that the hydro bill owed for service from November 2, 2008 to January 9, 2009 was \$27.22 and the gas bill from November 2, 2008 to January 9, 2009 was \$692.55. The landlord submitted invoices to verify the amounts. The landlord's position is that, had the tenants not violated their contract and fulfilled their commitment, the landlord would not have incurred these unexpected costs for the duration of the tenancy. The landlord feels that the landlord is entitled to be compensated.

The tenants disputed the claim for utilities stating that they terminated their accounts with these service providers and paid for all of the utilities that they consumed as residents in the unit. The tenants provided documents in evidence to verify that their accounts at that address were completely paid up and closed. The tenants feel that they concluded their association with the third parties supplying power that was needed to run their household and the tenants believe that they have no further responsibility to be involved with the landlord's independent relationship with these third parties and which they feel is not connected in any way to the tenants or to the tenancy agreement.

The landlord testified that, in order to secure new occupants to replace the tenants, the landlord was forced to charge less rent than the tenants had committed to in the tenancy agreement they signed and defaulted upon. The landlord testified that the rental rate that would have been paid by the tenants was \$1,350.00 per month, which would have run to the end of the agreement. The landlord testified that, instead, the landlord will now only receive \$1,100.00 per month, which is a net loss of \$250.00 per month. The landlord testified that these losses should certainly be compensated by the tenants, due to their failure to fulfill their obligations under the agreement. The landlord had submitted into evidence a copy of both tenancy agreements; that of the tenant to run from July 1, 2008 to June 30, 2009 and that of the new occupants to begin on February 1, 2009. The landlord testified that the new tenancy runs month-to-month and does not include use of the landlord's washer and dryer.

The tenants disputed the landlord's claim for loss of rent and do not feel that it is their responsibility to make up the difference in rent.

### **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 to order payment under these 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

- i. Proof that the damage or loss exists,
- ii. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- iii. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- iv. 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 respondent. 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.

#### Carpet Cleaning

While I can accept the landlord's testimony that the carpeting was stained and in need of a cleaning, and I accept that the landlord did incur expenditures to clean

this carpet, I find that the claim does not pass element two of the test for damages. Sections 23 and 35 of the Act place an obligation on the landlord and tenant to jointly inspect the unit at the beginning and ending of the tenancy and to complete and sign a condition inspection report, to verify that the parties agree it to be an accurate representation of the state of the rental unit. I find that, in the absence of this “before and after” data, it is not possible for the applicant to succeed in meeting the burden of proof to show that the damage was caused by the respondent in violation of the Act or agreement. Accordingly, I find that this portion of the landlord’s application must be dismissed.

### Utilities

I note that the tenants signed a tenancy agreement with a term that they agree to be responsible for paying their own utilities. I find that, while the landlord’s intention with this particular term may well have been that the landlord never be placed in a position to be saddled with utility payments up until to the end of the lease, the tenants did not necessarily intend to make a blanket commitment to “cover” utilities for the physical location for a one-year period regardless of whether or not they are occupying it. I find that it is inherent in such an agreement that the intention of the tenants in signing, is a firm commitment that they would be solely responsible for arranging and paying a third party for their own consumption of hydro electricity and natural gas. In fact, I find it would likely be an unconscionable term in a tenancy agreement that required a tenant to pay for the consumption of power for anyone else but the tenant. There is no doubt that the landlord incurred a loss that he otherwise would not have been exposed to. However it does not follow that this liability can then be allocated to the tenants for a period beyond which they are actually consuming the resources themselves.

I find that under the Act and under the agreement, the landlord is not entitled to be compensated by the tenants for this loss, and I find that this portion of the landlord’s claim must be dismissed.

### Loss of Rental Income

I find that, while the landlord has been granted entitlement for compensation for the full loss of rent of \$1,350.00 per month for the time that the unit was vacant, the landlord is not entitled to be compensated beyond January 2009 for the difference in rent between the two different agreements and subsequent loss of income. I find that the new tenancy agreement with the replacement tenants is not identical to that the landlord negotiated with the tenant/respondents. I find that the tenancy has since been significantly devalued. The new tenancy is a month-to-month arrangement which does not include the provision of laundry equipment by the landlord. Accordingly, I find that the tenants are not solely responsible for the resulting loss and I find that this portion of the landlord's claim must be dismissed.

### Outstanding Pet Damage Deposit

I find it necessary to now deal with the still outstanding matter of the tenant's pet damage deposit which is currently being held in trust by the landlord on behalf of the tenant. Section 38 of the Act requires that the deposit be returned. I find that, under the Act a landlord cannot merely retain this deposit in the absence of an order to do so, or without appropriately crediting the tenant for the amount already paid. Notwithstanding the fact that, as I understand it, the monetary order for damages that was previously ordered in favour of the landlord against the tenant on January 15, 2009 is still outstanding and in the stages of enforcement at this time, the matter of the pet deposit must still be laid to rest. It is not possible to set-off this amount towards the monetary order already issued. Therefore, I find it necessary to issue another separate monetary order in favour of the tenant for the return of the pet damage deposit and interest in the amount of \$682.22.

## **Conclusion**

Based on the testimony and evidence presented during these proceedings, I dismiss the landlord's application in its entirety.

I grant the Respondent/tenant a monetary order for the return of the pet damage deposit under section 67 of the *Act* for \$682.22. This order must be served on the Applicant/landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March 2009

Date of Decision

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Dispute Resolution Officer