



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	Keep All or Part of the Security Deposit
<u>FF</u>	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 money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

Both the landlord and tenant appeared 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 for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$16,054.12.

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 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 was caused by the tenant and
 - 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 began on May 1, 2007 at which time a security deposit of \$832.00 was paid. The landlord testified that a water pipe broke in the unit on the second floor during a period of time that the tenant was away. The landlord testified that, because the tenant did not report the leak in a timely manner, the tenant breached his obligations under the Act resulting in substantial water damage to the unit. The landlord stated that while the cause of the burst pipe was unknown, the tenant's failure to report the problem to the landlord was the cause of the damage.

The tenant testified that the water leak was reported as soon as it was discovered. However, the tenant was assigned work in another location as required and was not present in the unit at the time that the leaking began. The tenant does not agree that there was a breach of the Act or tenancy agreement and does not agree that the tenant should be required to pay damages.

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 (my emphasis)

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.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's 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 by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must pay for or repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear or for damage that was not caused by the tenant. This responsibility falls to the landlord under the Act.

The landlord has alleged that the tenant's failure to immediately report the leak was the primary cause of the damage. However, no proof was submitted that the tenant was negligent or not compliant with the Act. The fact that the damage occurred while the tenant was in possession of the unit does not suffice to serve as irrefutable proof that the tenant caused the problem. I find that the landlord's claim failed to pass the test for damages in that the landlord did not offer evidentiary proof that the tenant was violating the Act or responsible for causing the leak and the resulting damage.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that under the Act, the landlord is not entitled to any monetary compensation from the tenant. I find that, under the Act, the landlord is not entitled to retain the security deposit held on behalf of the tenant and that the security deposit should be administered forthwith according to section 38 of the Act.

The landlord's application is hereby dismissed without leave to reapply.

DT

Date of Decision

Dispute Resolution Officer