



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
<u>O</u>	Other
<u>SS</u>	Serve documents or evidence in a different way

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 tenants were represented 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 \$475.18

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 July 1, 2007 ending on January 31, 2009. The tenant paid a deposit of \$325.00. The parties testified that no move-in condition inspection was completed when the tenancy started as the unit and the appliances were new. A move-out inspection was not completed nor signed by the parties. The landlord testified that no move-out inspection was arranged because of the short time frame between when the tenants actually moved out and the arrival of the new tenants. Submitted into evidence was proof of service, photographs of the unit after the tenant had moved out, an itemized list of the damage, with explanations and photocopies of receipts for paint and other supplies.

No evidence was submitted by the tenant.

The landlord testified that when the tenants moved in the unit was in pristine condition. The landlord testified that when they moved out the tenants had left substantial damage to walls in the unit requiring patching and painting and referred to photographs showing holes in the walls, anchors left in the walls, attempted patching and painting of some of

the damage by the tenants, scrapes and gouges to the walls. The landlord also testified that the tenant left the unit in an unclean condition. The landlord is making a monetary claim for compensation for the cleaning, repairs, painting and supplies. The summary of the claim follows:

- Cleaning 7 hours @ \$15.00 per hour
- Patching and painting work 6 hours @ \$25.00 per hour
- Supplies \$210.00
- Garbage removal.

The landlord testified that the tenant had hung up pictures, and other wall attachments and had attempted to cover some of them with paint which was unsightly. The tenant had not pulled out the refrigerator, stove or washer and dryer to clean behind and had failed to fully clean the appliances. Drawer clips were missing from the stove and the cupboard liners and stove liners were either missing or dirty.

The tenants testified that they did their best to clean and repair the unit and leave it in the same condition as when they moved in. The tenant conceded that items were fastened to the wall and holes were left, but stated that the tenants were never told that they would have to patch these. The tenant stated that this would have been done, had the landlord advised them during a move out inspection of this expectation. The tenant acknowledged that the refrigerator and stove were not pulled out to clean behind them and that the tenant left some food in the refrigerator. The tenant stated that there was already damage to the wall from the landlord's removal of a sofa at the start of the tenancy and disputed the landlord's claim that the tenant left a mattress outside.

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, and that this damage or loss 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.

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 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.

I find that the landlord did not comply with the Act in regards to arranging a move-out inspection. While I appreciate that there is little time between the ending of one tenancy and the beginning of the next, this is a situation encountered by most landlords and there are ways to work around the time crunch through cooperation between the landlord and the tenant. I find that no attempt was made to arrange a mutual time.

That being said, I find that in this instance it is clear that the tenant did not comply with the Act. I find that the tenant did leave some damage and did not fully clean the unit. I do not accept the tenant's position that the tenant was not aware that holes in the wall would not be acceptable as evidenced by the fact that the tenant had unsuccessfully tried to cover some of the holes.

Analysis: Cleaning

I note that the claim against the tenant for cleaning was for 6 hours at the rate of \$15.00 per hour. I find that the tenant did do some cleaning prior to leaving but left the unit not as clean as it should have been, falling short of being "reasonably clean" as required by the Act. Therefore, I find that this claim by the landlord has satisfied the test for damages. I find that touch-up cleaning of this basement suite would require four hours and I grant the landlord compensation in the amount of \$60.00 for the cost of cleaning

Analysis: Wall Repairs

In regards to the claims against the tenant for damage to the walls totaling \$150.00, I note that the landlord was also responsible for one mark on the wall and it is possible that repainting of that wall would have been required to cover that blemish. I also find

that the wall was originally painted prior to December 2006. The expected duration for a paint finish on an interior wall is 10 years. Therefore I find it necessary to pro-rate the claim for painting and set the amount of compensation for the painting at \$120.00.

Analysis: Other Claims

In regards to the two receipts for paint supplies, I note that these receipts were issued under another name and address. I also find that the quantity of paint and the purchase of a paint tester seems to be excessive. However, I do accept that the landlord did incur costs for paint and drywall filler and grant the landlord compensation of \$85.00.

In regards to cleaning supplies purchased February 5, 2009 to replace depleted items of the landlord's I grant \$18.00 for the portion used for this one-time cleaning. I find that any additional claim not supported by a valid receipt has failed to satisfy the test for damages and therefore compensation will not be granted.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$333.00 comprised of \$60.00 for cleaning, \$120.00 for painting and wall repairs, \$85.00 for paint supplies, \$18.00 for cleaning supplies and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$332.37, in partial satisfaction of the claim. I find it unnecessary to issue a monetary order against the tenant as the remaining compensation owed to the landlord is under one dollar.

April 2009

Date of Decision

Dispute Resolution Officer