



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

OPR

MNR

MND Monetary Order for Damage to the Unit/Site/Property

MNDC Money Owed or Compensation for Damage or Loss

MNSD Keep All or Part of the Security Deposit

FF Recover the Filing Fee for this Application from the Respondent

### Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent issued on February 5, 2009, a monetary order for rental arrears and 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.

Although served by the landlord with the Application for Dispute Resolution and Notice of Hearing in person at her place of employment on March 6, 2009, the tenant did not appear

At the outset of the proceedings the landlord advised that the tenant had already vacated the unit. The landlord also advised that the tenant had paid rent owed for February in full after receiving the Notice to End Tenancy and had also paid rent for March 2009. In addition the key fob has since been returned. Therefore the landlord was no longer seeking an Order of Possession and the amount of the monetary claim shown in the application had to be amended.

### **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 repairs for a total claim of \$900.00.

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 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 landlord testified that tenancy began as a fixed term on March 1, 2008 to expire on March 31 2009, and a security deposit in the amount of \$550.00 was paid. The landlord stated that no move-in condition inspection report was completed as the unit was brand new. The landlord testified that the tenant was served a Notice to end Tenancy for Unpaid Rent and vacated sometime during February 2009 leaving a fish tank unattended and spoiled food as well as other personal items that the tenant eventually

retrieved. However, the tenant eventually paid the rental arrears in full to the end of March 2009. The landlord testified that the unit was left in an unclean condition requiring the landlord to incur costs and the landlord submitted photographs of the unit and the deck. The landlord testified that the tenant was given the opportunity to clean the unit and was also offered an opportunity to participate in the move-out inspection but failed to do either. A copy of the inspection report showing the move-out date and inspection date as March 31, 2009 and signed by the landlord, but not the tenant, was submitted into evidence. The landlord testified that costs were incurred for cleaning by a company that charged \$315.00 including GST and spent approximately four hours cleaning the unit. The invoice from this company was submitted defining the work as "rush cleaning service" with no further breakdown of the tasks, labour or materials. The landlord testified that carpet cleaning, washing the deck and disposal of some of the garbage and other items cost a further \$300.00 and submitted a copy of an invoice slip dated March 30, 2009 from an un-named source for \$300.00 and \$15.00 GST with the notation, "*carpet clean, power wash deck, disposal*". The landlord testified that some scrubbing and touch-up painting was done in the unit and repairs to the mantle. No documentation was submitted to confirm any charges for this work.

### **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, 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 37 (2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear. At the very least the expectation is that the unit be left in relatively the same condition it was in when the tenant took possession. Although there was no move in inspection, I accept the landlord's testimony that the unit was in a pristine condition when the tenant first occupied the unit. The landlord stated that at the end of the tenancy, the tenant left the unit in an unclean and damaged state and supplied photos to support this. I find that some of the photographs had been taken prior to the actual end of the tenancy and before the tenant had finished removing all of her possessions. That being said, it is evident that some cleaning was required and therefore I find that the tenant had

contravened section 37(2) of the Act. I find that the landlord has succeeded in meeting elements 1 and 2 in the test for damages. In regards to meeting element 3 of the test, relating to the landlord's verification of the monetary losses, I find that the claim of \$315.00 for the cleaning of the unit by the company based on the invoice dated March 31, 2009 can be accepted, despite the fact that the document is missing a precise breakdown of the tasks, labour and materials. However, I reject the invoice dated March 30, 2009 issued by the unidentified company. I note that the GST number is missing and the descriptions of the tasks are not sufficiently detailed to meet element 3 of the test for damages. On the other hand, because I do accept the landlord's testimony and evidence that the deck had to be cleaned and that some disposal was necessary, I find that some compensation is warranted and set the amount of compensation for this work at \$160.00 based on 8 hours of labour at \$20.00 per hour. In regards to the other claim for repairs and painting, I find that the landlord has failed to provide adequate proof of the damage and of the costs incurred and this claim does not the test for damages and must be dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord entitled monetary compensation in the amount of \$525.00 comprised of \$315.00 general cleaning, \$180.00 for washing the deck, disposal and miscellaneous cleaning and \$50.00 reimbursement for the fee paid to file the application.

I order that the landlord retain this amount from the security deposit and interest of \$566.90 leaving a balance of \$41.90 which I order must be refunded to the tenant forthwith. 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.

April 2009

Date of Decision

---

Dispute Resolution Officer