



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
MNR	Monetary Order for Unpaid Rent
MNSD	To Keep All or Part of the Security or Pet Damage Deposit
MNDC	Monetary Order for Money Owed or compensation for Damage or Loss
<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).

The landlord and the tenants were in attendance and each gave testimony in turn.

Issues to be Decided

The landlord was seeking to 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 \$5,000.00.

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. 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 was caused by the tenant
 - 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 October 1, 2005 and ended around February 1, 2009. The landlord testified that after the tenant moved out, the unit was left dirty and damaged. The landlord provided a evidence including invoices for carpet and painting, a statement from the carpet installers, a copy of the tenancy agreement, photographs, a copy of the written notice from the tenant dated January 29, 2009 stating that the tenant had vacated the unit, photographic evidence and proof of service. The tenant had submitted a written statement , a copy of an invoice for painting and photographs.

The landlord testified that the tenants gave no notice prior to vacating, merely leaving a note dated January 29, 2009 stating that they had to move as they could no longer afford the unit. As a result of this short notice and the time required to clean and repair the unit, the landlord stated that there was a loss of rent for February that could not be avoided. The landlord testified that that the tenants had removed part of the carpet in the hallway without permission and had left the remainder of the carpeting in the unit in a state that required removal and replacement being that it was extremely soiled and contaminated with pet urine. The landlord testified that when the tenants moved in, no condition inspection was done, however the home had just been purchased and was in reasonably clean condition. The landlord acknowledged that when the tenants moved it

the unit did require some minor cleaning of the appliances for which the tenants were credited \$40.00. The landlord stated that the carpeting was not more than 7 years old and appeared to be clean upon purchase of the home. According to the landlord, because part of the carpet was removed and the remainder was beyond cleaning, it was necessary to replace all of the carpeting at a cost of \$3,150.00. The landlord had submitted a written statement from the carpet professional supporting this conclusion. The landlord is claiming this amount from the tenants. In regards to the painting, the landlord testified that the unit needed to be repainted, particularly as the tenant had painted some rooms in a darker non-neutral shade. The cost of repainting was \$1,050.00 which the landlord is claiming. The landlord testified that there was additional damage to the unit and cleaning costs. However the landlord felt it necessary to limit the claim to \$5,000.00 as the remainder of the damage was difficult to prove and there is an added cost for dispute resolution when the monetary claim exceeds this amount.

The tenants testified that when they moved in the carpet was not clean and that they rented a carpet shampooer to do the job. The tenants disputed the landlord's allegation that their pets urinated on the carpet and stated that, although the carpet was left dirty, it was virtually in the same condition as when they took possession of the unit.. The tenants acknowledged that the hall carpeting was removed and testified that this was due to water damage from a leaking toilet that was verbally reported to the landlord to no avail. The tenants stated that the leaking also damaged the ceiling in the suite below. The tenants testified that they bought laminate flooring to replace the carpet in the hall. However, according to the tenant, because the landlord did not respond to the tenant's request for plumbing repairs, the tenants did not install the new flooring in the hallway. The tenants testified that the rooms were painted professionally and that there was no restriction on colours in the agreement. The tenant's position was that the unit did not require repainting by the landlord. The tenant's testified that during the tenancy the dishwasher malfunctioned and that despite being reported to the landlord, it was not repaired. The tenants purchased and installed a new dishwasher and left it in the unit.

The landlord responded to the tenant's testimony stating that there was never any report of a toilet leak and stated that, had this been reported, it would have been addressed. The landlord testified that he was willing to take care of any complaints by the tenant, for example, even paying to have a new fence installed at the tenant's request a short time before the tenancy suddenly ended. The landlord pointed out that the tenant had the option of lodging a complaint regarding the purported failure of the landlord to repair the alleged leaky toilet problem, by pursuing the matter through dispute resolution and did not do so. The Landlord noted that, in fact, no evidence of a leak has appeared to date. The landlord suggested that the hall carpet may have been damaged by the tenants from an overflowing bathtub or similar incident. In regards to the dishwasher, the landlord stated that he was not aware that the original dishwasher had any problems, but would have opted to repair rather than replace the unit.

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.

In regards to the claim for loss of rent, I note that section 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, I find that, with a Notice to end tenancy received by the landlord after February 1, 2009, in order to comply with the Act, the effective date could not be prior to March 31, 2009 and the tenant would be liable for losses to that date. Due to the tenant's violation of the Act I find that the landlord did incur a loss of one month of rent for February 2009. I find that the landlord fulfilled element 4 of the test for damages meeting the obligation to minimize the loss by re-renting the unit for March 1, 2009. Accordingly I find that the landlord's claim for \$1,400 loss of rent meets the test for damages and the landlord is entitled to compensation from the tenant.

In regards to the landlord's claim for carpeting and painting, I find that 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.

Section 37 states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

In regards to the claim for carpet replacement for the area in the hall, I find that the landlord has established that the carpet was removed by the tenant and therefore had to be replaced. I do not accept the tenant's unsupported testimony that this occurred because of any action or inaction on the part of the landlord and I find that the tenant was required to get the landlord's agreement before taking such an action. In regards to the general state of the carpet I find that while the landlord has proven that the carpet was in bad shape and stained and has proven that a cost was incurred to eliminate the damage, these facts only serve to satisfy elements 1 and 3 of the test for damages. The landlord must prove that the tenants were solely responsible for all of the damage. On a balance of probabilities, I find that the carpet was not likely in pristine condition at the start of the tenancy and there is the possibility that some of the pet damage predated the tenancy. Not all carpet damage is obvious on visual inspection of the surface pile and some damage, particularly soaked-through stains, can only be properly detected upon removal. There was no move-in inspection report which would have confirmed the agreement of both parties on the condition of the carpet at the start of the tenancy. I also note that the useful life expectancy of carpeting is approximately 10 years. In regards to the issue of mitigation, I find that the landlord did not present

testimony that he had made any attempt to mitigate the loss by trying to clean the carpets before opting to replace. I find that the landlord's claim for the complete replacement of the carpeting has not met the test for damages. That being said, I find that the landlord had no choice but to replace the section of carpeting in the hallway and should be compensated for this expenditure. Given the age of the carpet, I find that the pro-rated value, of 33%, for replacement of this particular section would be estimated at approximately \$150.00 and I grant this amount.

The carpeting throughout the unit may not have been perfectly clean when the tenants first arrived, but it is clear that the flooring was as dirty as when the tenant vacated. I find that the tenant was required to at least do a rudimentary cleaning of all of the carpeting in the unit prior to vacating, including removal of the items left on site. This would be expected in order to meet the tenant's obligation under the Act to leave the unit in a reasonably clean state. Therefore I find that the tenant must compensate the landlord for the value of carpet cleaning in the amount of \$230.00. I also find that the landlord is entitled to garbage removal costs of \$100.00.

In regards to the claim of \$1,050.00 against the tenant for the painting the walls, I find that the landlord has not met all elements in the test for damages and therefore this portion of the landlord's application must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$1,930.00 comprised of \$1,400.00 loss of rent, \$150.00 for the pro-rated value of the hall carpet replacement, \$230.00 for the value of carpet cleaning, \$100.00 for garbage removal and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit and interest of \$1,449.59 in partial satisfaction of the claim leaving a balance due of \$480.41.

Conclusion

I hereby issue a monetary order for \$480.41. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

May 2009

Date of Decision

Dispute Resolution Officer