



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, compensation for cleaning the unit and money owed or compensation for damage or loss under the Act.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 26, 2009, the tenant did not appear.

Preliminary Matter

The landlord advised that a previous hearing was held on the tenant's application for the return of double the security deposit and a monetary order was issued in favour of the tenant at that time. During that hearing the landlord had presented evidence of losses and damage caused by the tenant. However, as the hearing was on the tenant's application, the landlord was not able to present a claim for damages and was advised that a monetary claim by the landlord would require a separate application for dispute resolution from the landlord. The hearing before me is the landlord's subsequent application for monetary compensation.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent for the month of November, 2008, compensation for cleaning and repairs to the suite.

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 of rent. This determination is dependant upon answers to the following question:
 - Has the landlord submitted proof that damages or loss occurred due to the other party and in violation of the *Act*?
 - Has the landlord established and proven the expenditures or specific loss of value?
 - Has the landlord taken all reasonable steps to mitigate the losses?

Background and Evidence

The landlord testified that the month-to-month tenancy began in October 2007 and a copy of the tenancy agreement was submitted into evidence. The landlord testified that a move-in inspection was conducted, but the inspection report was not submitted into evidence for this hearing. The landlord testified that the tenant owed rental arrears of \$10.00 and submitted the rental ledger to verify this debt. The landlord testified that the tenancy ended on October 31, 2008 and that the tenant was given a formal notice by the landlord listing what was expected in regards to the move-out process. This document was submitted into evidence. The landlord stated that the tenant was also verbally offered more than one opportunity for the move-out inspection, but did not cooperate. The landlord testified that, under the tenancy agreement, the tenant was required to vacate the unit by noon. However, the tenant did not finish moving out of the unit until 5:30 p.m. The landlord is claiming an additional month's rent of \$580.00 for as damages for overholding. The landlord testified that the tenant left the unit in a filthy condition that required a substantial amount of cleaning which had to be done during the evening of October 31, 2008, because a new tenant was scheduled to move in on the following day. The landlord is claiming \$249.29 for the cleaning and provided two invoices showing that each cleaner spent four hours cleaning the suite. The landlord testified that, during the tenancy, the tenant caused damage to the toilet in March 2008 by disposing leftovers in the toilet, costing \$78.75 to repair and in May 2008 the tenant caused damage to the kitchen tap by hooking up a dishwasher that cost \$118.12 for a replacement faucet. The landlord supplied invoices and written witness testimony to

support these claims and is seeking reimbursement of \$347.09. The landlord testified that at the time the plumbing repairs were done, the tenant had verbally agreed that the repair costs would be repaid to the landlord by retaining these charges from the tenant's security deposit. However the tenant did not make this commitment in writing. The landlord testified that once the tenant vacated the unit it was discovered that the showerhead in the bathroom did not work and the landlord incurred \$150.22 for parts and labour, which is also being claimed in this application. A copy of an invoice for the showerhead was also included in evidence.

The landlord's total monetary claim for rent and damages is \$1,186.38 plus the \$50.00 cost for filing the application.

Analysis

Claim for Rent Owed

I find that the landlord's claim for rental arrears of \$10.00 is justified as supported by the rental ledger submitted into evidence by the landlord and the landlord is entitled to this amount.

DAMAGES

In regards to the other claims by the landlord, section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. 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. 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 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.

Claim for Overholding

In regards to the landlord's claim for the equivalent of one month rent of \$580.00, I find that the landlord's requirement that the tenant vacate by 12:00 noon, was merely a directive unilaterally issued by the landlord on the "Notice to Tenants when Vacating". As such, this is not considered to be a valid and enforceable term in the tenancy agreement. However, section 37 of the Act, which would apply to tenancies in the absence of a specific provision in the tenancy agreement, specifies that a tenant must vacate by 1:00 p.m. on the day the tenancy ends. I find that the tenant was in violation of the Act by remaining in possession of the unit until 5:30 p.m. That being said, I find that the landlord has not met element one and element three of the test for damages. I find that the landlord did not prove that a loss of \$580.00 was genuinely incurred by the landlord due to this contravention of the Act by the tenant. I find must dismiss the portion of the landlord's application claiming \$580.00 in damages for the tenant's overholding for 4.5 hours beyond the 1:00 p.m. statutory deadline.

Claim for Cleaning

In regards to the claim for cleaning costs, it was the testimony of the landlord that the unit was clean when the tenant moved in and filthy when the tenant vacated. Hand-written witness testimony signed by two individuals had been submitted into evidence, which also confirmed that the suite was not clean when the tenant vacated and offered additional observations about the tenant's conduct that was not material to these proceedings. These witnesses did not attend nor give testimony at the hearing.

In order to meet element two of the test for damages, in addition to verifying the existence of the claimed damage or loss, the applicant must also show that the tenant was to blame for causing the damage or loss and that this was in violation of the Act or tenancy agreement. Although the landlord issued a list of what was expected of the tenant in regards to cleaning the unit included in the document titled, "Notice to Tenants when Vacating", I find that, because these terms are not actually contained within the tenancy agreement, the tenant's failure to comply does not constitute a violation of the tenancy agreement. However, I find that it would still be a violation of the Act under section 37 (2)(a) if the tenant failed to leave the rental unit reasonably clean, and undamaged, upon vacating, except for reasonable wear and tear. The tenant would be liable for any costs or losses that flow from the tenant's failure to comply with the Act.

However, the Act requires that both a Move-in and a Move-out Condition Inspection Report be completed. These reports are critical in establishing the "before and after" status of the suite in order to determine the extent of damage and in order to verify that it occurred during the tenancy and did not pre-exist the tenancy. Regulations 16 and 17, excerpted below, set out exactly what is required of the parties in terms of arranging and conducting the inspections:

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) **the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.** (my emphasis)
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The landlord had apparently did conduct a move-in inspection, but was unable to arrange the move-out inspection. In regards to the move-out, I find that the landlord neglected to follow the required procedure under the Act and failed to issue and serve the tenant with a final opportunity for inspection on the applicable form. In any case, no move-in or move-out inspection reports had been submitted into evidence. There were no photos showing the unclean condition being alleged. I find that, to support a substantial claim for reimbursement entailing four hours of cleaning by two cleaners, written and verbal testimony would not carry the same evidentiary weight that tangible evidence could. That being said, I find that on a balance of probabilities, that some cleaning was likely required. However, I find that the claimed labour charges that calculate to be over \$30.00 per hour per cleaner appear to be excessive. Given the landlord's failure to provide the inspection reports, I find that the landlord is entitled to \$100.00 dollars in compensation for the cleanup of the unit.

Claim for Repairs

In regards to the damages to the unit being claimed, it is clear that the landlord paid a plumber to do some repairs on three different occasions during the tenancy. However, the landlord must prove that the tenant was solely responsible for all of the damage and the costs incurred. I note that the damage to the toilet and to the kitchen faucet had transpired months prior to the end of the tenancy and it is evident that the landlord did

not pursue any formal action against the tenant at the time. The landlord was unable to verify the age of the fixtures when asked. Even if it was found that the tenant was responsible for the damage, there is no way to determine the pro-rated value of the replacement items that must be based on useful life expectancy. The Act specifically states that a tenant is not responsible to pay for normal wear and tear and it is not clear what part this played in the expenditures. I also note that the evidence had been altered with additional hand-written notations made on the invoices by a third party after-the-fact, showing a breakdown of the portion of the amalgamated charges ostensibly applicable to the tenant's unit. Given the above factors, I find that the landlord has failed to adequately meet the standard of proof to satisfy all elements of the test for damage and loss relating to the faucet and the toilet claims and this portion of the application must be dismissed. In regards to the non-functioning showerhead discovered after the tenant had moved out, I find that the onus was on the landlord to prove that this breakdown was not due to wear and tear and I note, in particular, that four showerheads in the complex were replaced at the same time. I find that the landlord has not satisfied the test for damages in proving this claim and this portion of the application must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$160.00 comprised of \$10.00 for rental arrears, \$100.00 cleaning costs and the \$50.00 fee paid by the landlord to file this application. I grant the landlord a monetary order under section 67 of the *Act* for \$160.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

May 2009

Date of Decision

Dispute Resolution Officer