



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNSD</u>	The Return or Retention of the Security Deposit
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

### Introduction

The hearing was convened to deal with an application by the tenant for the return of double the \$650.00 security deposit under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$667.15 for the cost of cleaning, damages, returned cheque and telephone charges. The landlord was also seeking reimbursement for the \$50.00 fee paid for this application. .

Both the landlord and tenant were present and each gave testimony in turn.

### Issues to be Decided for the Tenant's Application

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?
  - Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and provision of the forwarding address?

### **Issues to be Decided for the Landlord's Application**

The landlord was seeking to receive a monetary order for cleaning, damage and other costs.

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 loss and damages. 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 that:
    - the costs were incurred due to the actions of the tenant.
    - the costs occurred due to a violation of the Act or Agreement
    - proof of the amount or value being claimed.
    - A reasonable effort has been made to minimize the damages?

The tenant had the burden of proof to establish that the deposit existed and that 15 days had expired from the time that the tenancy ended without the landlord either refunding the deposit or making application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted.

### **Background and Evidence**

A substantial amount of evidence was included by both parties.

The tenant testified that the landlord had not returned the tenant's security deposit within fifteen days after being given a forwarding address for the tenant in writing and, in fact, has not returned the deposit to date. The tenant is seeking double the security deposit pursuant to the provisions in section 38 of the Act.

The landlord testified that the tenancy originally began on September 18, 2008 and although a verbal promise was made by the tenants that they would remain for six months, the written agreement was for a month-to-month tenancy. The tenant paid a deposit of \$650.00 and the rent was set at \$1,300.00. The parties testified that the landlord received a written notice that the tenant intended to vacate the unit effective February 15, 2009.

The landlord testified that the tenant vacated the unit on February 17, 2009 and furnished a written forwarding address for only one of the co-tenants. The landlord testified that the deposit was not repaid at that time nor was an application made for the landlord to keep the deposit, because the landlord was awaiting receipt of the forwarding address of the other co-tenant.

The landlord testified that when the tenant moved in, a Move-In Inspection Report was completed and the unit was in pristine condition, with all appliances, flooring, walls, and fixtures being completely clean at the start of the tenancy and that the bedding supplied was all brand new. A copy of the Move-In Inspection Report was not submitted into evidence. However the landlord's witnesses testified in writing and one attended to also testify verbally at the hearing that the unit was completely clean prior to the tenancy and

not clean at the end. The witness stated that she was not certain about the inside of the stove and behind the appliances. The witness testified that the bedding appeared to be new and made comments about the tenant's failure to comply with the tenancy agreement in regards to the requirement to dry clean the quilts.

The landlord testified that, prior to the tenant moving out, two attempts were made by the landlord to arrange a move-out inspection both on the date given for vacating, February 15, 2009 and on February 17, 2009. However, the tenant did not cooperate and the complete inspection was done in the tenant's absence. The landlord testified that it was then discovered that the tenant had left the suite in an unclean and damaged state. The stove was not properly wiped down and the over-stove fan hood was coated in grease on the top surface. The landlord supplied photographic evidence showing grease on the surface of the stove fan hood. Another photo showed what appeared to be a burnt coating on portions of the stove and oven. The landlord testified that the floors were not properly cleaned and pointed out a dirt mark on the floor that was along the front edge of where the stove stood as well as a marked up area of floor underneath the stove. The landlord acknowledged that the stove was not on casters. The landlord submitted a photograph showing that the plastic holder of one of the window blinds was damaged. The landlord also submitted close-up photos of stains in the interior of cupboards, on top of the upper cabinets, under the sink, at the base of the toilet, under the toilet seat, beneath the sofa cushions, the base of a floor lamp, a trivet beside the sink with dishes in it and around the rim of a removed overhead light fixture cover. The witness appearing for the landlord had also signed the back of each of the photographs supporting the landlord's claim that the unit was in a filthy state at the end of the tenancy.

The landlord testified that that light bulbs were missing and that extensive cleaning was required entailing 21.5 hours of labour at a cost of \$375.00 and the purchase of supplies such as cleaning products, light bulbs, stove bibs and a mop refill totaling \$83.51.

The landlord testified that, although it was specified in the tenancy agreement that the tenant must not wash the pillows or quilt and that the tenant must have the bedding dry cleaned at the end of the tenancy, the landlord discovered that the tenant had washed the quilts, instead. The landlord testified that the bedding was newly purchased just prior to the tenancy and that the tenant's actions had resulted in fading and fraying of the cloth requiring replacement quilts. The landlord furnished photographs of the a damaged quilt but did not supply evidence of the original purchase price nor the date of purchase. However, the landlord did submit a receipt for the purchase of the replacement bedding in the amount of \$291.14. The landlord testified that during the tenancy one of the tenant's cheques was returned from the bank for insufficient funds. The landlord is claiming a \$30.00 NSF charge which is pursuant to a provision in the tenancy agreement and .95 for a telephone charge incurred by the tenant.

The tenant disputed all of the landlord's claims. The tenant testified that when the tenant moved in, no Move-In Inspection Report was ever completed or signed. The tenant testified that a joint move-out walk-through was never completed because the landlord became argumentative and verbally abusive during the process. The tenant disputed the landlord's claim that the unit was in pristine condition at the start of the tenancy. In particular, according to the tenant, the stove was already encrusted with a burnt coating, which was cleaned by the tenant as well as possible prior to vacating. The tenant supplied photographs of the stove/oven after the cleaning. The tenant had submitted numerous photographs of the unit showing it to be in presentable condition. In regards to the allegation that the bedding supplied was washed by the tenant, the tenant testified that this was necessary because there was a mildew smell in the unit affecting the linens. In regards to the grease on the over-stove fan hood, the tenant testified that it was not left in the condition that was shown in the landlord's photos. The tenant testified that the counters, floors and other areas were left clean and the blinds were intact. The tenant speculated that the remainder of the landlord's photos were staged by the landlord. The tenant disputed that there was any need for the 21.5 hours of cleaning being claimed or for the purchase of cleaning products for the unit. The

tenant testified that the landlord's actions, including a letter from the landlord chastising the tenant, dated February 16, 2009, confirm that the landlord had become hostile and that the landlord's claim was made as a reprisal for the tenant's choice to vacate after five months.

### **Analysis: Tenant's Application**

The tenant has made application for the return of the security deposit.

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

OR

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy was ended and the forwarding address was given to the landlord by February 17, 2009, under the Act the landlord should either have returned the deposit or made an application for dispute resolution within the following 15 days. However, the landlord's application for dispute resolution was not processed until April 7, 2009 which was beyond the fifteen days.

Section 38(6) If a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$650.00 security deposit paid plus interest on the original deposit .

### **Analysis: Landlord's Application**

In regards to the landlord's claim for monetary damages, an applicant's right to claim damages from the another party is covered under, Section 7 of the Act which 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. 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 mitigate the damage or losses that were incurred.

The landlord has presented photos clearly showing some dirt and damage. Provided that the unit was in clean condition when the tenancy started, it would be a violation of the Act under section 37 (2)(a) for a tenant to fail to ensure that the rental unit was reasonably clean, and undamaged except for reasonable wear and tear upon vacating and the tenant would be liable for any costs or losses that flowed from the tenant's failure to comply with the Act.

Move-In and Move-Out Inspection reports signed by both parties, are critical pieces of evidence required to prove that element 2 of the test for damages and loss has been met by showing the "before-and-after" pictures. In this instance, the move-in inspection report was missing and the move-out report was done by the landlord alone. The parties offered conflicting testimony on the subject of the unit's condition and both submitted photographs purporting to support their testimony about the condition at end of the tenancy.

I must point out that in any dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, during these proceedings, that the compensation being claimed is justified under the Act. When the evidence consists of conflicting and disputed verbal testimony, in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail.

The third-party witness testimony offered in support of the landlord's claims during the proceedings was appreciated. However, some of the witness testimony related to matters about which the individual did not have first-hand knowledge and it was evident that this witness had been told about certain things, rather than observing them herself. As such the evidentiary weight of this testimony was affected.

In regards to the cleaning claims, I find that the over-stove fan hood had not been adequately cleaned and that some of the surfaces in the rental unit required wiping,



including the insides of some cabinets and top of the cupboards. I find that the range was an older well-used model that could not likely be restored to a completely spotless state, regardless of the amount of scrubbing. In regards to surfaces under and behind the stove, I find that a tenant is not required to move appliances to clean under or behind them unless such appliances, a) are on casters and, b) the appliances were moved out for inspection of the tenant at the time the tenant moved in.

I have considered the evidence and testimony and have determined that on a balance of probabilities, at minimum, the unit did need some rudimentary dusting and wiping. I find that the landlord is entitled to four hours compensation for cleaning in the amount of \$60.00 plus \$25.00 for materials and supplies.

In regards to the landlord's claim for the damage to the quilts, I find that the landlord has succeeded in meeting each element in the test for damages. The quilts were damaged but not completely destroyed. I find that the tenant clearly violated the terms of the tenancy agreement by laundering the bedding, possibly with good intentions. However the process caused the fabric to fray and fade. In establishing the value of loss relating to the bedding, I find that the landlord failed to submit evidence verifying the original cost of these two items and the original date of purchase. However, the landlord provided proof of the cost of replacement bedding in the amount of \$291.14, including taxes. I note that the purchase was for replacement bedding sets and not just replacement quilts. Taking into account all of the above factors, I find that the landlord is entitled to be compensated in the amount of \$145.57 for the damage to the quilts which represents 50% of the claim.

In regards to the telephone charges of .95, I find that the landlord is entitled to full compensation.

In regards to the charge of \$30.00 for the NSF cheque, I note that section 7(1)(d) of the Residential Tenancy Regulation does permit a charge for returned cheques, provided there is a specific term in the tenancy agreement allowing the charge. However the

amount is limited to a maximum of \$25.00. Therefore I find that the landlord is entitled to be compensated \$25.00 by the tenant for the returned cheque

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,303.25 including double the deposit and \$3.25 interest

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to total monetary compensation of \$256.52. Pursuant to my authority under section 72 of the Act, I order that the security deposit refund of \$1,303.25 to which the tenant is entitled, be reduced by the \$256.52 compensation for damages and loss owed to the landlord. Accordingly I hereby issue a monetary order in favour of the tenant for the remainder of \$1,046.73. 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. I find that neither party is entitled to compensation for the cost of filing their respective applications. .

May 2009

Date of Decision

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Dispute Resolution Officer