



# 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

### 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. The claim was for \$700.00 based on the landlord's expenditures of \$944.29, not including labour.

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

### Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$700.00

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 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 in 2003 and ended in September 2008 with rent set at \$900.00 per month. The tenant paid a deposit of \$700.00. No move-in condition inspection report was completed when the tenancy started. However, the landlord testified that the unit was in good repair and clean condition with newer flooring and carpeting. A move-out inspection report was not completed nor signed by the parties. The landlord testified that the tenant left the unit in need of numerous repairs and replacement of the linoleum, carpeting and backsplash as well as painting and new baseboards. Submitted into evidence were some photographs of the unit after the tenant had moved out, and photocopies of several receipts for supplies. No evidence was submitted by the tenant.

The landlord referred to photographs showing a damaged backsplash in the kitchen, a marked-up door, carpeting with burn marks, flooring that was stained and the base of a wall missing baseboard.

The landlord also testified that the landlord incurred significant expenses that exceeded the amount of the security deposit even without adding in the landlord's labour.

The tenant testified that the landlord had made claims for repairs and renovations that were not caused by the tenant. The tenant stated that numerous items shown on the receipts submitted by the landlord pertained to renovations that had more to do with wear and tear than bona fide damage caused by the tenant such as the landlord's replacement of an old kitchen faucet, new exterior lighting fixtures and other improvements. The tenant acknowledged that the damage to the carpet and flooring occurred during his five-year tenancy. The tenant disputed the landlord's allegation that he absconded with the baseboards and pointed out that the photos confirm that nothing had been attached to and removed from the wall as evidenced by the lack of nail-holes. In regards to the backsplash, the tenant testified that the material used was not watertight ceramic tile but a plastic-coated panel that had been installed and was prone to surface wear when exposed to the damp area surrounding the wall-mounted tap.. The tenant did not agree that he had any responsibility to reimburse the landlord for the cost of this repair or the replacement fixture.

### **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.

It must first be determined whether there was a violation of the Act by the tenant. 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, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act 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.

That being said, I find that in this instance the tenant agreed that he did damage the floors and this would be considered to be in violation of the Act. I find that the flooring was over 5 years old and that the useful life expectancy of carpeting and linoleum is 10 years. In regards to the landlord's \$244.46 claim for flooring materials, I find that the landlord is entitled to compensation of \$122.23 cost for materials, prorated to reflect the age of the existing flooring, and an equal amount of \$122.23 for the landlord's labour totalling \$244.46.

In regards to the landlord's claim for the cost of missing baseboards, I note that there is disputed testimony from each party as to the existence of baseboards at the start of the tenancy. While the photograph clearly shows that the baseboard is not there and the receipts show that new baseboard was purchased, the issue to be proven was whether or not the unit featured intact baseboards when the tenancy began.

It is important to note that in a 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. I find that the landlord has not met the burden of proof to prove that the baseboards were attached to the wall when the tenancy started and that the tenant had removed and taken away the baseboards. Accordingly, I dismiss this portion of the landlord's application.

In regards to the claim for damage to the backsplash, I accept the tenant's testimony that there may have been an issue regarding the durability of the panel material utilized. I find that in the photograph, the water faucet and countertop are both vintage and the backsplash panel also appears to be an older style of material made of a coated fiber,

rather than genuine ceramic tile. I note that there is metal trim along the base where the panel adjoins the counter and an obvious gap in the paneling around where the chrome faucet extends from the wall. I find that these factors would leave the wall prone to water infusion which would over time find its way behind the panel to weaken it. Even if I accept that the backsplash was new when the tenancy began, I find that after five years of normal use, the damage to this backsplash panel was on a balance of probabilities likely due to normal wear and tear. I find that the landlord's claim in regards to the replacement of the backsplash must be dismissed.

In regards to the claim of damage to the door, which was new at the time the tenant first moved in, I find that the dirt left on the surface would need to be removed and the door primed and painted. The landlord is entitled to be compensated for this work and the supplies. I set this amount at \$75.00 including materials and labour.

Although no photographs were placed in evidence to show the condition of the walls, according to the landlord, the unit required repainting and a receipt shows that 18.5 litres of paint was purchased for this purpose at a cost of \$118.72. I find that the landlord is entitled to \$59.36 for 50% of the cost of paint, being that the life expectancy for paint is listed in insurance tables to be 10 years.

In regards to the receipts for materials and supplies, I find that identifying what the materials were and what repairs they pertained to quite a challenge. The landlord acknowledged that some items presented as costs were actually purchased to do renovations that did not relate to damage done by the tenant.

## **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation in the amount of \$428.82 comprised of costs that satisfy the test for damages including \$244.46 for replacing the flooring, \$75.00 to restore the door, half the cost of paint of \$59.36 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain this amount from the tenant's security deposit and interest of \$724.36, in partial satisfaction of the claim and I grant a monetary order in favour of the tenant for the remainder in the amount of \$295.54. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary. The remainder of the landlord's application is dismissed without leave.

June, 2009

Date of Decision

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Dispute Resolution Officer