



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.

Both the landlord and tenants 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 and receive a monetary order for damage to the unit, money owed or compensation for damage and loss under the Act and loss of rent for a total claim of \$13,755.57

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 as a fixed term on April 15, 2008 expiring on April 30, 2009. However, the tenant terminated the agreement effective February 25, 2009. Submitted into evidence was proof of service, photographs of the unit by both the tenant and the landlord, written statements from both parties, an itemized list of the damage, repairs and costs, a written rebuttal by the tenant regarding each of the landlord's claims, Witness testimony from the tenant's cleaner, invoices and estimates showing costs to repair the damage, copies of email between the parties, a copy of a Notice to End Tenancy dated February 15, 2009 and effective February 25, 2009 and a copy of the tenancy agreement.

The landlord testified that the tenants moved in on April 15, 2008 for a fixed term tenancy agreement which was to end on April 30, 2009 with rent set at \$2,450.00 payable on the 15th day of each month and a deposit of \$1,225.00 paid by the tenant. The landlord testified that the unit was newly built and was in pristine condition when the tenant moved in. The landlord testified that on February 15, 2009 the tenant informed the landlord that she could not pay the rent and needed to move. The landlord testified that a Notice to End Tenancy was issued at the tenant's request, after which the landlord commenced showing the unit to prospective renters and succeeded in re-

renting the unit for \$2,250.00 per month starting March 1, 2009. The landlord is claiming half a month's loss of rent from February 15, 2009 until the re-renting occurred on March 1, 2009 in the amount of \$1,225.00. The landlord is also claiming a loss of rent of \$400.00 due to the lower amount of rent collected from the new occupants for the final two months of what would have been during the tenant's lease. The landlord testified that two appointments were made to do a Move-out Inspection with the tenant as required under the Act, but the tenant did not show up. The landlord testified that a formal Final Opportunity for Inspection Notice on the required form could not be served as the tenant had suddenly moved and had only supplied a telephone number for contact. The landlord testified that the tenant left substantial damage to the unit and also left the unit in an unclean condition. The landlord is making a monetary claim for compensation for the cleaning and repairs.

According to the landlord, it was evident that the tenant did not have the carpets professionally cleaned, which then had to be done at a cost of \$80.00 and this amount is being claimed against the tenant. The landlord testified that the tenant also failed to properly clean the stove and other appliances and neglected to replace light bulbs. The landlord is claiming cleaning costs for 9.75 hours of labour at \$30.00 per hour and purchase of supplies including \$24.87 for cleaning products and \$12.31 for light bulbs. The landlord testified that the damage left by the tenant included gouges and marks in the walls that had to be patched and painted. The landlord also found that touch-up paint had been dabbed on the walls and trim but that this did not match the existing matt and gloss paint finishes, thus necessitating 9.75 hours to repaint at \$30.00 per hour. Supplies purchased included \$33.59 for paint and \$12.29 for painting tools. The landlord testified that the tenant left stained carpeting in a bedroom that appeared to have been bleached by the tenant in an unsuccessful effort to remove a red mark. This requires replacement of a portion of the carpet with an estimated repair cost of \$500.00, including materials and labour. The landlord is also claiming \$500.00 for damage to the microwave, \$400.00 for damage to one of the two blinds that were marred, and \$30.19 for replacement door and mailbox keys. The landlord supplied written invoices and

estimates for most of the above claims except for the blind and microwave replacement or repair costs. The landlord testified that the most disturbing damage discovered after the tenant had moved, was destruction to the finish of the engineered hardwood flooring that was featured throughout the main living areas. The landlord testified that areas of the floor was covered in a smeared-on substance which was sticky to the touch. The landlord referenced photos appearing to show that the floor finish was marred by something on the surface that did not blend in with the texture and colour of the existing wood. The landlord testified that the tenant was contacted to find out what had been used on the floor and the tenant admitted to applying minwax to repair scratches on the floor. The landlord supplied a copy of an email from the tenant stating that this "wood finish" normally takes 12 hours to dry and can be removed with mineral spirits. The instructions from the website sent by the tenant and information provided by staff at the local building centre about how to remove minwax, was to treat the area with turpentine or other mineral spirits. The landlord attempted to eliminate the minwax stain using the turpentine at a cost of \$10.23, which is being claimed. However the landlord testified that this effort did not succeed in restoring the original finish of the floor. The landlord testified that it was clear that the flooring was damaged to the extent that it would require expert restoration. The landlord testified that the installation of this flooring product involved gluing the flooring directly to the cement surface and that the repair work would involve removing the damaged portion, cleaning and preparing the surface, purchasing and re-installing matched engineered wood flooring. The landlord submitted an estimate from the original flooring contractor of the builder showing approximate costs for floor preparation in the amount of \$2,900.00 and estimated costs to supply and install flooring in the affected area in the amount of \$4,367.00 for a total expenditure of \$7,267.00. In addition, according to the landlord, the unit would need to be vacated for a period of time costing the landlord \$2,250.00 for loss of rent. The total claim by the landlord to restore the floor is \$9,517.00

The tenant testified that the tenancy was ended due to the tenant's inability to meet the cost of rent. The tenant agreed to the following claims: rent owed for the latter half of

February in the amount of \$1,225.00, rental loss of \$400.00 and light bulb replacement of \$12.31. However, the tenant disputed the \$292.50 costs claimed for cleaning and the \$80.00 claimed for the carpet cleaning. The tenant testified that a professional cleaner hired by the tenant did a complete cleaning job on the unit. The tenant included a written statement from this cleaner.

The tenant objected to the painting costs of \$292.50 claimed for labour and \$45.88 claimed for paint and supplies. The tenant stated that the re-painting was unnecessary as all of the touch-up paint done by the tenant on the walls and trim was done with the paint supplied by the builder. The tenant stated that the spots had been re-painted to match perfectly. The tenant could not explain why the photographs showed otherwise.

The tenant also disputed the estimated \$500.00 repair costs for the bedroom carpet stained with a red spot and bleach damage. The tenant felt that the estimate from the carpeting contractor was too high and that a smaller patch could be arranged, given the proximity of the stain to the edge of the baseboards.

In regards to the damage to the blinds, the tenant stated that one of the blinds fell down and the landlord neglected to fix it during the tenancy. The tenant stated that she knew nothing about damage to the other blind, being claimed by the landlord and disputed the claim for \$400.00. In regards to the stained microwave, for which the landlord is claiming \$500.00, the tenant feels that this staining was normal wear and that the oven still works perfectly fine. The tenant does not feel that compensation of \$500.00 for a replacement is warranted. In regards to the \$30.19 claim for keys, the tenant testified that she had returned all of the keys to the landlord.

On the issue of the floor damage, the tenant would only acknowledge touching up two minor dents in the floor with the minwax stain product. The tenant stated that she had no involvement in causing the smeared finish and damages shown in the photos. The tenant denied ever admitting to the landlord that a stain product was spread over the larger area of the floor surface as being alleged by the landlord.

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 rent owed and the loss of rent, I find that the parties are in agreement and I find that the landlord is entitled to \$1,225.00 for rent and \$400.00 for loss of rent to the end of the fixed term.

In regards to the other claims, 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 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(2) states that when a tenant vacates a rental unit, the tenant must: (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and; (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In this instance I find that it would be a violation of the Act for the tenant not to leave the unit reasonably clean and to leave unresolved damage to the unit. It would also be a violation of the Act if the tenant failed to return all of the keys.

In regards to determining value, I find that, if an item is close to the end of its useful life, then damage due to wear and tear is more likely and the award would be reduced to the pro-rated replacement value of the item. However, in this instance, the unit was newly built and therefore wear and tear is not a factor. I find that each individual claim made by the landlord must be analyzed and determined separately. These are categorized under the headings below:

Analysis: Cleaning

I find that the landlord's claims for cleaning have met the test for damages and that the landlord is entitled to \$251.00 for general and carpet cleaning including the following:

- \$80.00 for professional carpet cleaning
- \$146.25 for 9.75 hours of cleaning at \$15.00 per hour
- \$12.44 for the portion of cleaning products used on this unit, estimated at 50%
- \$12.31 for light bulbs

Analysis: Painting & Repairs

In regards to the claims against the tenant for damage to, and painting of, the walls, I find that the tenant's efforts to touch up the paint did not succeed and I also note that there was other damage to the drywall and trim as clearly evidenced by the photographs. I find that the landlord has met all of the elements to justify the \$240.88 in compensation for the repair and repainting including:

- \$195.00 for 9.75 hours of labour at \$20.00 per hour.
- \$33.59 for paint
- \$12.29 for painting tools.

Analysis Carpet Repair

In regards to the damaged carpeting in the bedroom I find that the tenant acknowledged causing the stain but objected to the landlord's proposed method of repairing the carpet. I find that the landlord had validly based the \$500.00 estimate on the recommended method proposed by a carpeting professional. I find that the landlord's claim for compensation for the repair work has successfully met all elements in the test for damages and I find that the landlord is validly entitled to the \$500.00 claimed.

Analysis Blinds, and Microwave

The landlord is also claiming \$500.00 for damage to the microwave and \$400.00 for damage to one of the two blinds that were marred, I find that these two claims, which are disputed by the tenant, do not meet the test for damages. No invoices or estimates were submitted to verify the repair or replacement costs. The tenant pointed out that the microwave is still functional. The blind, although appearing to be marred apparently still does the job. I find that this portion of the landlord's claim must be dismissed.

Analysis: Flooring

In regards to the flooring, I find from reviewing the photographs that it is obvious that something had occurred that has permanently affected some areas of the floor, the nature of which remains unclear. The landlord referenced photos appearing to show that the floor finish was marred by something on the surface that did not blend in with the texture and colour of the existing wood. I accept the landlord's testimony that the floor was sticky to the touch and that when she contacted the tenant, the tenant admitted to using a product to repair scratches on the floor. I find that this testimony was supported by an email from the tenant discussing the "wood finish" and referring the landlord to a website. I find that the landlord did attempt to mitigate the losses by trying to remove the finish, but in the end found it necessary to get an estimate from a qualified professional. I find that I have no reason to doubt the accuracy or veracity of this estimate, being that the flooring contractor contacted was the same one that had originally installed the floor just prior to the tenant moving in. I find that the landlord is entitled to be compensated in the amount of \$7,277.23 for the following costs:

- \$10.23 for turpentine
- \$2,900.00 for floor preparation
- \$4,367.00 to supply and install flooring in the affected area

I dismiss the landlord's claim for \$2,250.00 anticipated loss of rent during the repairs, as this future loss may or may not occur, and I find it unlikely that the repairs would take a full month to complete.

Analysis: Other Claims

I find, based on a balance of probabilities, that the tenant did not surrender all of the keys to the unit and that the landlord is entitled to be reimbursed the \$30.19 spent on replacement keys.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$9,524.43, comprised of \$1,225.00 for rent, \$400.00 for loss of rent, \$251.00 for general and carpet cleaning, \$240.88 for painting and wall repairs, \$500.00 to repair the bedroom carpet, \$7,277.23 for repairs to the hardwood floor, \$30.19 spent on replacement keys and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$1,238.10 in partial satisfaction of the claim and hereby issue a monetary order for the remainder in the amount of \$8,286.20. 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.

June 2009

Date of Decision

Dispute Resolution Officer