



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

<u>MNR</u>	Rent owed
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>MNSD</u>	An Order to Retain the Security Deposit
<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 loss owed, compensation for damages to and cleaning of the unit and an order to keep the security deposit.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on March 12, 2009, the tenant did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent for the month of January, 2009, 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 On August 15, 2009 with rent set at \$1,800.00 and a deposit of \$900.00. No copy of the tenancy agreement was submitted into evidence. The landlord testified that no move-in inspection report was completed. The landlord testified that photographs exist showing the condition of the unit at the start of the tenancy, but these were not submitted into evidence. The landlord testified that the tenant gave notice, an undated copy of which is in evidence, and had moved out by December 31, 2008. The landlord testified that the unit was left in a deplorable condition. Submitted into evidence was a copy of a 4-page handwritten report with notations about damage to windows, carpet, flooring, ceilings, kitchen cupboards, doors, fire alarms, stairways and walls. The fourth page of the report contains a sentence and signature of one of the co-tenants and is dated January 2, 2009, acknowledging the damage listed on the previous three pages.

The landlord testified that photos taken at the end of the tenancy show serious damage caused by the tenants. These photos were not submitted into evidence. The landlord provided several invoices including 2 receipts for garbage clean-up totaling \$533.61, locksmith charges of \$131.25, carpet cleaning of \$157.50, a bill for 3.5 hours of cleaning for \$300.00, supplies from Home Depot for \$29.64, and invoice for repairs to walls and repainting for \$2,875.00 . The landlord testified that his evidence was also served on the tenant attached to the Notice of Hearing. The landlord is also claiming \$1,800.00 loss of rent for the month of January 2009. The total amount shown as being claimed on the application is \$5,000.00.

Analysis

Claim for Rent Owed

I find that the landlord's claim for loss of rent in the amount of \$1,800.00 for January 2009 is supported by the evidence by the landlord and I find that the landlord is entitled to this amount.

Claim for Repairs

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.

Section 32 of the Act requires that a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and that *a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant*, except for

any damage from reasonable wear and tear. In this instance the landlord has offered verbal testimony about significant damage. Evidence submitted on the subject consisted of a document purportedly signed by one of the tenants on January 2, 2009 agreeing to “all damage”. However, I note that the data was not submitted on a valid Condition Inspection Report Form as required by the Act. I find that the damage is listed on three pages without much detail and that a fourth page contains only the tenant’s statement and signature. Moreover, according to the dates and testimony, certain notations were made on the document *after* the tenant had signed it. I also find that there was no Move-In Inspection Report completed as required by the Act. Without adequate proof of the “before and after” condition of the unit, the landlord’s claim has difficulty in satisfying element 2 of the test for damages and loss. In regards to the landlord’s claim for supplies of \$ \$29.64, and repairs/repainting of the walls for \$2,875.00, I find that these claims fail both element 2 of the test for damages as the landlord’s evidence does not verify that the damage occurred during the tenancy and was due to the tenant. The receipt for painting and wall repairs also fails element 3 of the test for damages because it lacks sufficient detail regarding exactly what was done, how many hours each task took and the labour rate being charged. Given the above, I find that the portion of the landlord’s application relating to repairs must be dismissed.

Claim for Cleaning Costs

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. 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 in violation of the Act or tenancy agreement. I find that it would 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 and that the tenant would be liable for any costs or losses that flow from the tenant's failure to comply with the Act.

I accept that, on a balance of probabilities, the unit was left in an untidy state. I find that the landlord’s claim for garbage removal totaling \$533.61, supported by invoices, is justified. In regards to the carpet cleaning of \$157.50, I find that this is also supported by the testimony and evidence. However, I reject the claim for \$300.00 for 3.5 hours of

cleaning as the invoice is not sufficiently detailed and the rate of \$85.71 per hour is excessive. That being said, I find it more likely than not that cleaning was required and I find that the landlord is entitled to \$70.00 for 3.5 hours of cleaning at the rate of \$20.00 per hour.

Other Claims

I find that the landlord's claim for compensation of \$131.25 for changing the locks is supported as the tenant failed to surrender the keys as required under the Act and the landlord incurred the costs of a locksmith to re-key. I also find that the landlord is entitled to be reimbursed the cost of filing this application in the amount of \$50.00.

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 \$2,742.36 comprised of \$1,800.00 for loss of rent, \$533.61 for garbage disposal, \$157.50 for carpet cleaning, \$70.00 general cleaning costs, \$131.25, and the \$50.00 fee paid by the landlord to file this application. . I order that the landlord retain the security deposit and interest of \$905.13 in partial satisfaction of the claim leaving a balance due of \$1,837.37. I hereby grant the landlord a monetary order under section 67 of the Act for \$1,837.37. 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.

June 2009

Date of Decision

Dispute Resolution Officer