



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 tenant had made application and had received an Order of Substituted service on April 22, 2009. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 24, 2009, the tenant did not appear.

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 and for money owed or compensation for damage and loss under the Act for a total claim of \$2,317.07

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 on March 30, 2008 and the tenant paid a security deposit of \$440.00. The required pet damage deposit was \$400.00 of which only \$68.09 was actually paid. The landlord testified that the move-in condition inspection was completed at the start of the tenancy and the move-out inspection was completed at the end of the tenancy. This document was submitted into evidence. The landlord submitted a copy of the tenancy agreement, copies of the Notices to End Tenancy, copies of invoices, and estimate for carpeting and a number of photographs.

The landlord was claiming:

- \$440.00 partial rent for November 2009
- \$25.00 Late payment fee for November 2009
- \$225.00 Unpaid rent and late fees accrued from April to October 2009
- \$35.00 Bedroom window replacement

- \$210.00 Items and Garbage removal
- \$32.71 Water charges from July 3 – October 31, 2008
- \$75.92 Living room window replacement
- \$109.73 Hydro charges from August 26 to September 30, 2008
- \$57.15 Hydro charges from October 1 to October 31, 2009
- \$22.00 Entry lock change
- \$57.15 Replace carpet runner in hall
- \$339.50 Estimated to replace carpet in kids' room
- \$530.00 for total for cleaning

The landlord testified that the unit was in good repair and clean condition at the beginning of the tenancy as evidenced by the move-in inspection report. The landlord testified that the tenant abandoned the unit prior to the landlord being able to arrange the move-out inspection report. The landlord submitted into evidence a "Move Out Cleaning Price List" showing a range of prices to clean each item or area in the unit.

The landlord testified that the tenant left the unit in an unsanitary, damaged state and that repairs had to be completed to re-rent the unit, which occurred on November 15, 2009.

No evidence was submitted by the tenant.

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.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. 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 tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the Act provides 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. To do otherwise would be a violation of the Act.

I find that the tenant did not comply with the Act in regards to leaving the unit clean and undamaged.

I find that invoices confirm the claim of \$35.00 for the bedroom window replacement on November 12, 2009, \$75.92 for the living room window replacement ordered on October 22, 2009, \$22.00 for the purchase of an entry lock on November 1, 2009. I find that the landlord is entitled to be compensated in the amount of \$132.92 for these items.

I find that the landlord received an estimate for carpet replacement in the amount of \$339.50 appearing to be dated November 10, 2008. I find that the landlord did not provide proof of the actual payment of this expenditure and therefore the claim failed to meet element 3 of the test for damages and loss. I find that this portion of the landlord's claim must therefore be dismissed.

I find that the landlord also received an estimate of \$200.00 for garbage removal dated January 10, 2009 and testified that the costs ended up to be much more. However, the landlord did not provide any proof of payment for garbage removal. That being said, I find that it is clear that some items were left that had to be removed. Although the amount claimed fails to meet element 3 of the test for damages I will grant the landlord an estimated amount of \$60.00 to compensate the landlord.

In regards to the damaged hall runner, I find that the landlord has provided proof that the carpet was damaged but not proof of the cost expended in the amount of \$57.15 to replace it. I find that this portion of the application failing element 3 in the test for damages must therefore be dismissed.

I accept that the unit did require some cleaning by the landlord. However, the \$530.00 charge for cleaning, as claimed by the landlord, should be based on the value of the labour which would include an hourly rate and the amount of time taken to clean. I find that the listing of standard charges on a chart is not sufficient proof of the quantum of damage and loss to fully meet element three of the test for damages. That being said, it is clear that genuine cleaning costs or labour was called for. I find that an estimate of \$150.00 for the cost of cleaning and a further \$50.00 for removal of the stickers left on the wall would safely be warranted, amounting to total cleaning costs of \$200.00.

In regards to the loss of rent for half of the month of November 2008, I find that while the landlord verbally testified that the unit was vacant for half the month of November, the landlord did not provide proof of the date the showing that a new tenancy began on November 15, 2008. Accordingly I reject the landlord's claim of \$440.00 partial rent for November 2008 and dismiss this portion of the landlord's claim.

I also do not accept the landlord's claim for the late fee of \$25.00 for November. In regards to the accrued late payments of \$225.00 now being claimed for past months, I find that the landlord evidently took no action at the time that these deficiencies transpired and I find that this portion of the landlord's claim for fees must be dismissed.

I accept the landlord's claim for outstanding utility charges in the amount shown on the Ten-Day Notice to End Tenancy dated November 2, 2009, which is shown to be \$57.15. I find that the remainder of the claim for utilities including \$109.73 for accrued past hydro charges and \$32.71 for accrued past water charges must be dismissed as it is unclear when the tenant was notified of these in writing, if at all. I find that the landlord is definitely entitled to \$57.15 for utilities.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$500.07 comprised of \$132.92 for windows and locks, \$60.00 to compensate the landlord for removing garbage and other items, \$200.00 for cleaning, \$57.15 for utilities 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 and pet damage deposit and interest of \$513.86, in full satisfaction of the claim. I find hereby to issue a monetary order in favour of the tenant for the remainder of the deposits in the amount of \$13.79 which must be refunded by the landlord. This order must be served on the landlord by registered mail and may be enforced in Small Claims Court.

July 2009

Date of Decision

Dispute Resolution Officer