



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNSD</u>	The Return 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

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of the security deposit under the Act and a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act for \$2,226.00.

Both the landlord and tenant were present and gave testimony in turn. The landlord called a witness and the tenant also called a called a witness to testify and each was cross examined by the other party.

Issues to be Decided for the Tenant's Application

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord.

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

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?

- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for rent owed and compensation for loss of rent, cleaning and repairs.

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*. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the rental amount being claimed is 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 that the costs were incurred due to the actions of the tenant that contravened the *Act* or agreement?
 - Has the landlord proven that the amount or value being claimed is justified?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show that compensation for damages and losses is justified. .

Background and Evidence

The tenancy began on March 5, 2009 with rent set at \$1,500.00 per month. A security deposit of \$500.00 was paid with an agreement between the parties that the tenant would contribute labour in the form of repairs and cleaning in lieu of the remainder of the deposit in the amount of \$250.00 which would result in \$750.00 total deposit being held by the landlord. The tenant vacated on March 30, 2009 and the tenant furnished the landlord with a forwarding address at that time. The tenant testified that the landlord did not return the deposit and the tenant is seeking a monetary order for the deposit.

The landlord testified that the landlord should be entitled to retain the deposit to partially compensate the landlord for damages and loss and be granted a monetary order for the rest. The landlord testified that during the negotiations to rent, a condition for beginning the tenancy was that the tenant supply references, but this did not occur. The landlord testified that no tenancy agreement was ever signed. The landlord testified that the tenancy agreement submitted into evidence by the tenant was fraudulent and not signed by the landlord. The landlord testified that a tentative agreement was reached wherein the tenant having paid the \$500.00 deposit, was supposed to work in exchange for the remaining \$250.00 deposit. According to the landlord, the unit did not need cleaning and repairs but the tenant insisted on the arrangement. A copy of the tenant's undated, signed agreement to perform several tasks was included in evidence. The landlord testified that the tenant also insisted that the landlord must have the carpets shampooed, which was then done with costs bourn by the landlord. The return of the previous tenant's deposit, according to the landlord, proves that the unit was in good repair and in a reasonably clean state at that start of this tenancy.

The landlord testified that, in any case, the tenant failed to do the required work and did not pay the remainder of the security deposit either. The landlord testified that when the tenant failed to give the promised references, the landlord considered this to mean that the tenancy was "cancelled". The landlord testified that the landlord told the tenant in a telephone conversation that a tenancy would not be established and that the rent and deposit paid would be refunded, after which the landlord would have possession of the unit. The landlord testified that the tenant verbally agreed to this during the phone call, but when the landlord came to the unit to refund the payments, the tenant would not cooperate. The landlord testified that an argument occurred with verbal abuse from the tenant. The landlord testified that the tenant vowed to remain in the unit without paying.

The landlord testified that a Ten-Day Notice to End Tenancy for Unpaid Rent was issued and a copy of a notice dated March 12, 2009, was submitted into evidence by the tenant showing that the amount due on March 3, 2009 for which the tenant was in

arrears was \$500.00. However, the landlord also submitted the second page of a Ten-Day Notice indicating that the tenant owed \$1,495.00 due on the first day of March, 2009. The landlord testified that after the tenant moved out of the unit on March 30, 2009 leaving it damaged and dirty. The landlord submitted a hand-written invoice dated April 22, 2009 for drywall repairs, door replacement, lighting and painting for \$1,000.00 with commentary about the doors being damaged "*because of improper use*". Also submitted was a hand-written invoice, partially obscured, for carpet cleaning containing commentary about there being, "*dog and human pea*", which did not show the amount charged nor the date of the service. The landlord was also claiming loss of rent for April in the amount of \$1,500.00 and cleaning costs. The landlord's witness supported the landlord's testimony that the unit was in good condition when the tenant moved in and filthy and damaged when the tenant moved out and verified that labour for this was billed at \$50.00. The witness also supported the landlord's claim that an argument broke out when the landlord tried to refund the rent and cancel the tenancy.

The tenant testified that when the tenant moved in, the residence was not clean and was in poor repair. The tenant testified that the tenant paid \$500.00 deposit with an agreement that the tenant would do some work in exchange for the remaining \$250.00 of the deposit. This agreement also required that the landlord complete some repairs and arrange for carpet cleaning. The document submitted into evidence indicated that the tenant committed to paint, clean floors, fridge, blinds, walls & stove and buy a door and that receipts would be provided to the landlord. The tenant submitted before and after photos of the unit. However, the landlord stated that this evidence was not served and it was disregarded. The tenant's verbal testimony on the condition of the unit was heard instead. The tenant testified that the landlord did not do the repairs promised and that, as a result, the tenant's roommate could not move in. The tenant testified that a substantial amount of cleaning was done by the tenant. The would-be roommate's testimony confirmed that the unit was not in good repair and that as a result, she could not move in at all. This witness supported the tenant's testimony over all..

The tenant testified that the landlord appeared at the tenant's door without notice on June 8, 2009, at which time an argument broke out with raised voices and abusive comments from both parties including the tenant. The tenant testified that the landlord attempted to evict the tenant without due process and that the tenant finally agreed to vacate on March 30, 2009. The tenant testified that the rent for March 2009 was paid in full. The tenant disagreed that the tenant should be responsible for the landlord's loss of rent for April being that it was the landlord who initiated the end of the tenancy. In regards to the claim for cleaning and repairs, the tenant testified that issues involving painting, cleaning, electrical and door repairs, predated the tenancy. The tenant testified that, in fact, costs were incurred by the tenant due to the landlord's noncompliance with the Act as the tenant suffered financial outlay including the cost of preparing and filing the application, work done on the rental unit for which the tenant was not reimbursed, and the cost of relocating. The tenant's second witness supported the tenant's testimony about the state of the unit at the start of the tenancy and observed that it was left in a much cleaner state upon vacating.

Analysis: Security Deposit

The Act contains a definition of "**tenancy agreement**" as: *an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities..* Section 16 of the Act provides that: *the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.* I find as a fact that these two parties were in a landlord and tenant relationship and as such the provisions contained in the Residential Tenancy Act and Regulations will apply to this situation.

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.

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 fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the circumstances.

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 verify the amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or loss.

I find that the tenant was not responsible for ending the tenancy in violation of the Act. In fact the termination of the tenancy was pursued by the landlord. I find that the tenant consented to vacate at the landlord's urging, not because of a lawful eviction under the Act. Therefore, I find that the landlord's claim for loss of rent for April 2009 in the amount of \$1,500.00 fails element 2 of the test for damages as it was not caused by a violation of the Act on the part of the tenant.

In regards to the landlord's claim for cleaning and repairs, I find that, whether or not the landlord incurred expenditures to clean and repair the residence, the landlord was not able to sufficiently prove that the damage and condition of the unit resulted from the actions of the tenant in violation of the Act. I find that there was irrefutable evidence supplied by both parties to indicate that the premises were not clean, that the residence had damaged doors, dirty carpets and required painting from the beginning. In fact, the landlord was prepared to credit the tenant with a portion of the security deposit at the start of the tenancy of \$250.00 for attending to these very issues. I also find that the invoices for the repair work lacked sufficient detail with no breakdown for the materials and labour. I find that both invoices contained gratuitous commentary about the tenancy that appear to have been included to bolster the landlord's claims.

I find that this tenancy has ended and I acknowledge that the landlord may well have incurred a financial impact from the failure of this relationship. However, none of the monetary claims successfully passed elements in the test for damages and loss.

I find that the tenant paid the rent in full for the period of time the tenant occupied the unit. There was not sufficient evidence put forth by the landlord to prove that the tenant had left the unit in any worse condition than it was in when the tenant arrived.

In regards to the agreement that allocated a \$250.00 credit to replace a portion of the security deposit in exchange for the tenant's labour, I accept that the tenant may have completed some of the tasks listed on the agreement and failed to complete others. Given that efforts to end the tenancy were started shortly after it began, I find that the

tenant did not likely have the time, nor the incentive, to “earn” the \$250.00 credit. Therefore I find that the security deposit being held by the landlord on behalf of the tenant consisted of the \$500.00 paid by the tenant.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to the return of the tenant’s security deposit and I hereby grant a monetary order in favour of the tenant in the amount of \$550.00, comprised of \$500.00 security deposit and the \$50.00 paid by the tenant for this application. 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.

The landlord’s application is hereby dismissed in its entirety without leave to reapply.

July 2009

Date of Decision

Dispute Resolution Officer