



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MND, FF

### **Introduction**

This hearing dealt with the landlord's application for a monetary order for damage to the unit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to a monetary order under the Act, including recovery of the filing fee

### **Background and Evidence**

Two previous hearings were held in disputes between these same parties with decisions issued on September 10, 2008 and April 8, 2009. The tenancy began on November 1, 2008 and ended in early April 2009. In this application the landlord seeks recovery of costs for cleaning and repairs to the unit following the end of tenancy.

A move-in condition inspection and report were completed together by the parties. The report reflects that the move-in inspection was completed on November 1, 2008.

However, a move-out condition inspection and report were completed by the landlord without the tenant's participation. The report reflects that the move-out inspection was completed on April 16, 2009.

The tenant claims she did not have a proper opportunity to participate in a move-out condition inspection. The tenant also claims she did not receive a copy of the move-out condition inspection report, or copies of the photographs showing damage to the unit

after the end of tenancy, or a copy of the invoice showing related costs to the landlord in the amount of \$3,688.65.

The landlord takes the position that the tenant was given a proper opportunity to participate in the move-out condition inspection and that copies of the aforementioned documents and photographs were hand-delivered to her at her place of work.

Evidence submitted by the landlord includes a one page, typed and unsigned message to the tenant dated April 9, 2009. In the message the landlord informs the tenant that she has scheduled the 'house condition inspection' later that same day at 8:00 p.m. In the message the landlord requests that the tenant inform her by way of an e-mail address provided in the message if she is unable to attend.

Evidence submitted by the landlord also includes a one page, typed, unsigned and undated message to the tenant which she refers to as "a second notice for the 'house condition inspection.'" The scheduled time for the inspection is identified in the message as "....tomorrow, Wednesday, April 15, at 7:00pm." The message closes by requesting that the tenant "contact me if you are unable to come."

Further evidence submitted by the landlord includes a copy of the Notice of Final Opportunity to Schedule a Condition Inspection. This notice identifies the proposed time for inspecting the unit as 7:00 p.m., April 16, 2009. The proposed date for inspection is consistent with the date shown on the move-out condition inspection report as the date when the inspection was completed.

The tenant submitted into evidence a copy of a message from the landlord dated April 8, 2009. It is a variation of the above message dated April 9, 2009, a copy of which was submitted into evidence by the landlord. The tenant states that this message was dropped off at her place of employment on April 8, 2009, and that she received it the next day, April 9, 2009. The tenant claims she was not able to attend the proposed condition inspection because of "work and lack of notice from [the landlord]." In association with this the tenant submitted a photocopy of what she claimed was an

undeliverable e-mail message dated April 9, 2009 to the e-mail address provided by the landlord. In this e-mail the tenant stated:

I will not be available tonight to do the inspection. I will be free on sun april 12<sup>th</sup> at 1:00 p.m. I will be at the [rental unit address] then.

The tenant claims she attended the unit that weekend but found no one there.

### **Analysis**

Section 35 of the Act addresses **Condition inspection: end of tenancy**. In particular, section 35(2) & (2) states:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Further to the above statutory provision, section 17 of the Residential Tenancy Regulation speaks to **Two opportunities for inspection** and provides as follows:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

There is no evidence that the landlord considered the time proposed by the tenant for Sunday, April 12 at noon, as required by section 17(2)(a) of the Act, before proceeding to provide the tenant with "notice in the approved form."

Further, I am unable to conclude with certainty that all pictures submitted by the landlord show the interior of the subject unit following the end of the tenancy. The subject unit is one of what are two units in the house and the other unit was vacated by tenants in February 2009.

Additionally, the invoice is not a definitive record of costs that have been incurred, as might be demonstrated by a receipt, or even an invoice stamped as "PAID." Further, while the invoice shows the address of the house, it does not specify whether work undertaken was specific to one unit in particular or both units.

Finally, the invoice is insufficiently detailed to permit conclusions to be drawn in regard to this particular tenancy and work required in the unit. Specifically, the description of work set out on the invoice is as follows:

- Replaced windows; door & light fixtures
- Repaired bathroom hangers & shelves & dishwasher
- filling walls (holes) and painting
- cleaning and garbages removal [reproduced as written]

As for costs, labour and materials are each identified in lump sums as opposed to being itemized and aligned with any particular unit or any particular areas within a unit.

In summary, there is insufficient evidence that proper process was undertaken in relation to the move-out condition inspection. Additionally, there is insufficient evidence of a clear relationship between this particular tenancy and costs incurred by the landlord for cleaning and repair to the unit. Accordingly, I find that the landlord has not established entitlement to a monetary order as claimed, and I therefore dismiss the application.

### **Conclusion**

For all of the above reasons, the landlord's application is dismissed.

DATE: July 28, 2009

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Dispute Resolution Officer