



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNR</u>	Monetary Order for unpaid rent or utilities
<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<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 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.

A previous hearing was held on April 28, 2009 to deal with the tenant's application with the decision rendered on April 29, 2009 in which the Dispute Resolution Officer found that the landlord had wrongfully taken possession of the unit on February 8, 2009 and awarded the tenant \$300.00 monetary order against the landlord for loss of property. At that hearing, the tenant's request for the return of the \$300.00 security deposit was found to be premature as no forwarding address had yet been provided to the landlord. However, the tenant's forwarding address was confirmed and provided to the landlord during the April 28, 2009 hearing. Thereafter, the landlord submitted the application before me on May 11, 2009, seeking \$600.00 rent owed for the month of February 2009, \$600.00 loss of rent for the month of March 2009, monetary damages for cleaning

and repairs and administrative costs, totalling a claim of \$1,542.08. the landlord requested that the security deposit of \$300.00 be retained to partially cover the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on May 13, 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 rent owed, loss of rent, damage to the unit and for money owed or compensation for damage and loss under the Act . The issues to be determined based on the testimony and the evidence were:

- Whether the landlord was owed rent by the tenant
- 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 was dependant upon answers to the following questions:
  - Had the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?
  - Had 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:
    - 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 was on the landlord/claimant.

## **Background and Evidence**

The tenancy began in July 2006 and ended on February 8, 2009. The tenant paid a security deposit of \$300.00. Submitted into evidence was proof of service, photographs of the unit during the tenancy, copies of invoices and receipts for repairs, a copy of the Ten-Day Notice and a copy of a rent cheque issued to the landlord by the Ministry which had apparently been fraudulently endorsed by a third party. The landlord had not submitted a copy of any Move-In Inspection Report nor a copy of the tenancy agreement.

The landlord testified that the tenant failed to pay \$600.00 rent for the month of February and was presumed to have vacated on February 8, 2009. The landlord testified that the tenant had caused damage to the refrigerator, walls, kitchen faucet, carpeting and flooring. Although the photos were taken prior to the tenant vacating, the landlord pointed out damage shown to the linoleum, carpet, walls and cabinets. The landlord stated that the flooring had been newly installed prior to the start of the tenancy. The following claims were submitted: \$30.00 for underpad, \$442.40 for flooring, carpet, cabinet door fronts and kitchen faucet, \$997.50 labour "*to fix damage done to bsmt suite*" and the cost of evidence photos. The landlord testified that the unit could not be re-rented until April 2009 and is therefore requesting \$600.00 for loss of rent.

The landlord testified that the tenant left without providing a forwarding address. However, the tenant's current address was later obtained during the previous hearing.

## **Analysis**

### **Rent Owed**

According to Section 26 of the Act, rent is payable when it is due. and I find that the rent for the month of February 2009 was due and payable on February 1, 2009. and that the landlord is entitled to \$600.00 compensation.

### Loss of Rent and Damages for Cleaning and Repairs

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.

Regarding the landlord's claim for loss of rent for the month of March 2009, I find that, while the landlord may have genuinely incurred a loss, it must still be proven that this happened despite reasonable efforts made by the landlord to minimize the losses caused by the tenant. The landlord took the position that the unclean, damaged state of the unit delayed all efforts to re-rent. However, I find that the landlord had approximately a three-week period during February 2009 to get the repairs done. I also find that some of the supplies for the repairs were not purchased until March 9, 2009. I find that the landlord also failed to provide hard evidence, such as dated advertisements, to verify exactly when the rental efforts were started and what these entailed, in order to establish that landlord took reasonable steps to mitigate the one-month loss, as required under section 7 of the Act.

Given the above, I find that the landlord did not satisfy element 4 of the test for damages above and the claim for loss of \$600.00 rent claimed for the month of March, 2009, must therefore be dismissed.

In regards to the damages claimed for the cost of cleaning and repairs, I note that under section 32 of the Act which contains provisions regarding both the landlord's and the tenant's obligations to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit the tenant has a responsibility to return the unit in the same condition it was in when the tenancy began. Under the Act, a tenant of a rental unit is obligated to 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. However, a tenant is not required to make repairs for reasonable wear and tear.

In this instance, I note that the absence of a move-in and move out condition inspection report hampers the assessment of the damages during the tenant's occupancy. No evidentiary proof was submitted to confirm what condition the unit was in at the time it was rented in July 2006. In addition, while the photographic evidence did clearly show that the unit in an untidy and deplorable condition, these photos were taken prior to the ending of the tenancy. No photos were submitted showing the vacated unit.

The landlord's testimony on this matter does not have carry the same evidentiary weight as would before-and-after condition inspection reports signed by both parties, which I note is also a statutory requirement under the Act.

Moreover, the Dispute Resolution Officer presiding over the previous hearing found that the landlord had taken possession of the unit prematurely without following the Act. I find that this action by the landlord could possibly have prevented the tenant from properly cleaning and repairing the unit prior to vacating.

In the absence of proof regarding the before and after condition of the suite, as well as the prejudice caused by landlord's decision to take arbitrary possession of the unit, I find that element 2 of the test for damages has not been satisfied. Therefore, I find that the portion of the application relating to the cost of repairs must be dismissed.

I find that the landlord is entitled to total compensation of \$650.00 comprised of \$600.00 for rent for the month of February 2009 and the \$50.00 paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$309.86 in partial satisfaction of the claim leaving a balance due of \$340.14.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$340.14. 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.

August 2009

Date of Decision

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Dispute Resolution Officer