



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MNSD</u>	The Return or Retention 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

The hearing was convened to deal with an application by the tenant for the return of double the \$875.00 security deposit and interest under the Act, less the \$489.45 already paid. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$410.45 for the cost of 4 hours of yard work and \$210.45 materials and labour to replace a light fixture damages. The landlord was also seeking reimbursement for the \$50.00 fee paid for this application. .

Both the landlord and tenant were present and each gave testimony in turn.

Issues to be Decided for the Tenant's Application

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

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

- Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and provision of the forwarding address?

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for cleaning, damage and other costs. The issues to be determined based on the testimony and the evidence are:

- 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 that:
 - the costs were incurred due to the actions of the tenant.
 - the costs occurred due to a violation of the Act or Agreement
 - proof of the amount or value being claimed.
 - A reasonable effort has been made to minimize the damages?

The tenant had the burden of proof to establish that the deposit existed and that 15 days had expired from the time that the tenancy ended without the landlord either refunding all of the deposit or making application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted.

Background and Evidence

The tenancy began in April 2008 and ended in June 2009. The rent was \$1,750.00 and a deposit of \$875.00 was paid. The tenant testified that after the tenancy ended, both parties were aware that the tenant planned to return to finish cutting the grass. The tenant testified that this was agreed to by the landlord's agent. However, on July 2, 2009, the landlord's refused to allow the tenant to do the job.

The tenant testified that the landlord only refunded \$489.45 of the \$875.00 security deposit. The landlord acknowledged keeping part of the deposit in compensation two claims. There was a claim for mowing the lawn and clean-up of grass cuttings which,

according to the landlord, entailed 4 hours of work at \$50.00 per hour for a total charge of \$200.00. The landlord testified that when the tenancy ended at the end of July, he expected the tenant to do the work. However, by July 2, 2009, he was prepared to do it himself and was unwilling to let the tenant back on the property to complete the task.

There was also a claim for an additional \$210.45 charged for replacement of a light fixture at a cost of \$60.45 for the fixture and two hours of labour at \$75.00 per hour. No invoices were submitted into evidence by the landlord verifying the costs. The landlord testified that the overhead light in question was original to the home and was removed by the tenant during the tenancy to install a newer fixture. The landlord stated that, although the tenant promised to sell him the new fixture and leave it in place, the new fixture had been taken and the old one left, damaged, on the floor.

The tenant testified that they had replaced numerous fixtures in the unit and that these had then been sold to the landlord as per their agreement. The tenant testified because the original fixture in question was an eyesore, the tenant had purchased a new expensive fixture and there was no intention to sell this one to the landlord. The tenant testified that the existing fixture was already damaged prior to the tenancy and, at the end of the tenancy, could not be re-installed because of its deteriorated condition.

Analysis: Tenant's Application

The tenant has made application for the return of double the security deposit that the tenant felt was wrongfully retained by the landlord. I find that 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 forwarding address a landlord must either: repay 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.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy was terminated and the forwarding address was given to the landlord, under the Act the landlord should either have returned the deposit or made an application for dispute resolution within the following 15 days. The landlord applied on August 10, 2009.

Section 38(6) If a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$385.55 retained by the landlord equalling \$771.10, plus interest of \$6.60 on the original deposit paid for a total monetary entitlement of \$777.70.

Analysis: Landlord's Application

An applicant's right to claim damages from the another party is covered under, section 7 of the Act which states that if a landlord or tenant does not comply with this Act, regulations or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer. 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 mitigate the damage or losses that were incurred.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant and a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 37(20) of the Act states 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.

In regards to the landlord's claim of \$200.00 for the lawn, I find that the hourly rate of \$50.00 being charged by the landlord is excessive. Although the tenant did not show up to complete the job until July 2, 2009, I find that by refusing the belated work offer from the tenant, who was willing and ready to mow the lawn, the landlord failed to meet element four of the test for damages. A party claiming damages or losses has an obligation under section 7 of the Act to do whatever is reasonable to minimize the damages. Accordingly, I find that this portion of the landlord's claim must be dismissed.

In regards to the loss of the original light fixture, I find that under section 32 of the Act the landlord is responsible for replacing any broken or worn out light fixtures in a rental unit. A tenant is not responsible to repair wear and tear under section 32 or 37 of the Act. In any case, even if I found that the tenant had wilfully destroyed an existing light, the compensable value owed would have to be pro-rated according to the age. I find that the useful life expectancy of a light fixture is deemed to be 15 years and it is likely that this particular fixture was older than that. Given the above, I find that the portion of the landlord's application relating to the cost of installing a new fixture to replace the used fixture must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation of \$827.70 comprised of double the remaining deposit of \$385.55 amounting to \$771.10, interest of \$6.60 and the \$50.00 paid for the application.

This order must be served on the Respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

November 2009

Date of Decision

Dispute Resolution Officer