



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 \$375.00 security deposit under the Act. 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 \$4,999.99 for the cost of cleaning, damages, returned cheque and telephone charges. 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:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss and damages. This determination is dependant upon answers to the following questions:
- 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 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

A substantial amount of evidence was included by both parties.

The tenant testified that the landlord had not returned the tenant's security deposit of \$375.00 plus interest within fifteen days after being given a written forwarding address by the tenant and, in fact, has not returned the deposit to date. The tenant is seeking double the security deposit pursuant to the provisions in section 38 of the Act.

The parties testified that the tenancy began in November 1999 and when the tenancy began, no move in inspection report was ever completed. The landlord issued a Two-Month Notice to End Tenancy for Landlord's Use effective June 1, 2009. A copy of the Notice was in evidence indicating that the landlord had all necessary permits and approvals required by law to demolish the rental unit or repair the unit in a manner that required the unit to be vacant. The landlord testified that the tenant was supposed to vacate the unit by 1:00 p.m. but the tenant was not finished removing all of the possessions and the landlord returned prepared to do the move-out inspection at 6:30 p.m.. The landlord testified that the inspection was completed without the tenant. The landlord testified that the tenant left the unit in a deplorable condition which was why the deposit had not been returned.

The tenant acknowledged that she was not prepared at 1:00 p.m. but stated that when the landlord arrived the landlord became verbally abusive and ordered the tenant off the property under threat of contacting the police. The tenant stated that although she was anticipating additional movers with trucks who were coming after work to help the tenant with the final clear-out, after the heated confrontation with the landlord, the tenant felt forced to leave, despite not having everything completely finished up.

The landlord supplied a list of repairs and renovations amounting to a cost of \$10,342.46. However, the landlord was only claiming compensation of \$4,999.99 from the tenant.

The landlord testified that the kitchen cabinets were installed in 1978 but were in good condition prior to the tenancy. The landlord referred to photographic evidence showing that the cabinets were damaged. The landlord testified that the cabinets were replaced

with new ones at a cost of \$3,936.00 and the landlord was only claiming for the lower cabinets and seeking compensation of \$1,968.00. The tenant disputed the claim pointing out that the cabinets were made of particle board, were forty years old and were not pristine when the tenant moved in ten years ago.

The landlord testified that the tenant had left a substantial amount of garbage on the site and left the unit in a dirty state. The landlord stated that they had paid \$300.00 for garbage removal and spent 20 hours cleaning at a cost for time and supplies of \$200.00. The tenant disputed the claim on the basis that some of the items had been left there by the previous tenant and that the tenant would have been able to remove more items and do more cleaning had the landlord not confronted the tenant and ordered the tenant off of the property. The tenant admitted that she left some jars and plastic under the deck and estimated the tenant's portion of the cost of garbage removal at \$20.00.

The landlord was also claiming compensation for the damage to the carpet that the landlord alleged was caused by the tenant. The replacement cost was \$700.00. The tenant objected to this claim on the basis that the carpet was horrible when the tenant moved in and was in bad shape due to normal wear and tear prior to and during the tenancy.

The landlord testified that three doors were replaced and others were damaged by the tenant including damaged bi-fold doors and hardware. The doors were approximately 30 years old and the cost of replacement was \$66.00, \$76.52, and \$52.00. The tenant disputed the claim.

The landlord was claiming \$400.00 for repairing the walls and repainting due to damage and to get rid of the smoke smell. The landlord had submitted photos of the wall damage and damage from removal of the handrail in the stairway.

The tenant disputed the claim on the basis that there was wall damage not due to the actions of the tenant and that repainting was needed because of normal wear and tear.

The landlord testified that the tenant failed to care for the yard and left it in a mess with lots of waste and damaged landscaping that required 20 hours of labour to restore at a cost of \$300.00. The landlord referred to photos of the yard showing overgrowth and bare patches. The tenant disputed the claim and referred to past photos of the tenant's gardens as evidence that the tenant did not neglect the yard. The tenant testified that after the landscaping was disturbed and the landlord had re-seeded the lawn, a lot of weeds appeared and the gardens had never fully recovered. The tenant admitted to leaving the compost for the landlord's use.

The landlord was claiming compensation for replacing the damaged bathroom linoleum with tile, but was only seeking the cost of materials in the amount of \$152.00. The tenant did not agree that the landlord was entitled to the cost of materials from the tenant to replace a vintage tile floor that was used for decades.

The landlord was also claiming the value of a missing bathroom mirror in the amount of \$15.00 and the vanity which cost \$200.00. The tenant argued that the mirror was left in the bathroom but had been removed as it was already missing 2 clips when the tenancy began and the tenant feared that it would fall. In regards to the old vanity, the tenant stated that the door "dissolved" in her hands and that it was likely the original 1978 cabinet.

Analysis: Tenant's Application

The tenant has made application for the return of the security deposit.

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.

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 ended and the forwarding address was given to the landlord shortly thereafter, under the Act the landlord should either have returned the deposit or made an application for dispute resolution within the following 15 days. However, the landlord's application for dispute resolution seeking damages and to retain the deposit was not processed until October 19, 2009 which was beyond the fifteen days.

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 \$375.00 security deposit paid plus \$33.70 interest on the original deposit totalling \$783.70.

Analysis: Landlord's Application

I find that the compensation claimed by the landlord amounts to a total of \$4,397.52 comprised of \$1,968.00 for kitchen cabinets, \$300.00 for garbage removal, \$200.00 for inside cleaning, \$700.00 for flooring to replace the carpet, \$192.52 for doors, \$400.00 for repairing the walls and repainting, \$152.00 for bathroom tile supplies, \$300.00 for labour for yard clean-up and landscaping, \$15.00 for the bathroom mirror and \$200.00 to replace the bathroom vanity.

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, 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 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. 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 or a person permitted on the residential property by 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.

The landlord has presented photos clearly showing some damage. The landlord also submitted proof that the unit was not clean. I find that this evidence only satisfies element 1 of the test for damages.

Provided that the unit was in a clean condition when the tenancy started, it would be a violation of the Act under section 37 (2)(a) for a tenant to fail to ensure that the rental unit was reasonably clean, and undamaged except for reasonable wear and tear upon vacating, failing which the tenant could be liable for any costs or losses that flowed from the tenant's failure to comply with the Act.

I find that move-in and move-out Inspection reports signed by both parties, are a requirement of the Act and these function as critical evidence in proving that that element 2 of the test for damages and loss has been met by illustrating the "before-and-after" state of the unit that was agreed by all. However, at the time this tenancy started, almost ten years ago, this was not a mandatory requirement under the Act. In this instance, the move-in inspection report was missing and the move-out report was done by the landlord alone. I find that the parties offered conflicting testimony on the subject of the unit's condition and both submitted testimony and photographs purporting to support their positions about the condition at beginning and end of the tenancy. I accept the tenant's testimony that there may have been some condition and cleanliness issues at the start of the tenancy.

I find that many of the landlord's claims for damages were impacted by the age of the finishes and fixtures and the fact that the unit was in dire need of renovations due to its vintage through natural wear and tear. I find that cabinets have a useful life of 25 years, carpeting is expected to last 10 years, doors 20 years, interior paint 4 years, linoleum 10 to 20 years and railings and banisters 10 years. I find that the kitchen and bathroom

cabinets, the flooring, closet doors, and paint finishes had all exceeded their expected demise. I find that the portion of the landlord's application relating to the claims for \$1,968.00 for kitchen cabinets, \$700.00 for flooring to replace the carpet, \$192.52 for doors, \$400.00 for repainting walls, \$152.00 for bathroom tile, \$15.00 for the bathroom mirror and \$200.00 to replace the old bathroom vanity, all fail to meet element 2 of the test for damages and must be dismissed .

In regards to the claims for garbage removal of \$300.00 I find that this claim may have some merit. I find, however, that the testimony of the landlord was refuted by the tenant's testimony that the unit was not completely empty when the previous occupant left and that items were left on site when the tenant moved in. In addition, I find that the confrontation that occurred during the move-out process, when the landlord discovered that the tenant was not going to meet the 1:00 p.m. deadline specified by the Act, likely caused the tenant to abandon the clean-up that was still in process. Being that this was a long-term tenancy, it is not clear why the landlord took issue with the delay.

In regards to the claim for interior cleaning for \$200.00, I find that the landlord was clearly planning to embark upon substantial renovation work, as indicated in the Two Month Notice to End Tenancy served on the tenant, and the tenant was aware that a totally clean unit would be of little consequence in this plan.

I find that the tenant did admit to abandoning some jars and plastic left under the deck and it is likely that, on a balance of probabilities the tenant may not have succeeded in leaving the unit in a reasonably uncluttered state even if given more time. I find that the landlord is entitled to be compensated for \$100.00 for all of the garbage removal attributable to the tenant alone.

In regards to the yard clean-up and landscaping, I find that the tenant can not be held responsible for weed over growth or other landscaping problems as these can occur through various factors and the claim therefore fails element 2 of the test for damages.

However, I do find that the tenant should have mowed the lawn and I set the cost of this job at \$25.00. I find that the landlord is entitled to total monetary compensation in the amount of \$125.00 for damages.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation of \$833.70 comprised of double the deposit of \$375.00 totaling \$750.00 and interest of \$33.70, plus the \$50.00 paid for the application.

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to total monetary compensation of \$125.00 for cleanup and lawn cutting.

Pursuant to my authority under section 72 of the Act, I order that the security deposit refund of \$833.70 to which the tenant is entitled, be reduced by the \$125.00 compensation for damages and loss owed to the landlord. Accordingly I hereby issue a monetary order in favour of the tenant for the remainder of \$708.70. 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.

The remainder of the landlord's application is dismissed without leave to reapply.

November 2009

Date of Decision

Dispute Resolution Officer