



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

|             |   |
|-------------|---|
| <u>MND</u>  | For Damage to the Unit/Site/Property                            |
| <u>MNR</u>  | Monetary Order for Rent Owed                                    |
| <u>MNSD</u> | 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 landlord for a monetary claim for damage to the unit/site/property in the amount of \$644.00 for cleaning and damage caused by the tenant. The hearing was also convened to deal with the tenant's application for the return of the \$350.00 security deposit and a monetary order for \$16,800.00 for compensation for damage or loss under the Act. and the \$50.00 fee paid by the tenant for this application.

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

#### **Issues to be Decided for the Landlord's Application**

The landlord was seeking to receive a monetary order for damages and compensation for one month's rent for inadequate notice by the tenant.

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 of rent 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 in violation of the *Act*?
  - Has the landlord proven that the amount or value being claimed is justified and that the landlord made reasonable effort to minimize the damages?

The burden of proof is on the Landlord.

### **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 and monetary compensation for loss of value to the tenancy.

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 provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
  - Was an order issued permitting the landlord to retain the deposit?

- Has the tenant 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 losses were incurred due to the actions of the landlord in violation of the Act?
  - Has the tenant proven that the amount or value being claimed is justified and that the tenant made reasonable effort to minimize the damages?

The tenant has the burden of proof to establish that the deposit existed and to prove the damages being claimed.

### **Background and Evidence Landlord's Claim**

The tenancy began on May 5, 2007 with rent of \$700.00 per month and a security deposit of \$350.00. The tenancy ended on June 31, 2009. The landlord testified that the tenancy agreement forbade smoking and pets.

The landlord submitted a copy of the tenancy agreement signed by the tenant showing no pets were allowed and an unsigned copy of the tenancy agreement addendum indicating that no pets or smoking were allowed. The landlord stated that because of the smoking odour and pet smells, the walls needed to be washed down requiring 3 hours of scrubbing and this still did not remove the foul odour. The landlord referred to a photo submitted into evidence showing dust on the baseboard which, according to the landlord, attested to the fact that the tenant had not washed the walls as claimed. The landlord was claiming \$60.00. The landlord was also claiming an additional 5 hours of cleaning valued at \$100.00, based on the landlord's allegation that the tenant failed to clean under the stove and refrigerator, portions of the stove, food and grease on surfaces as well as dirty flooring and carpets. The landlord was claiming \$10.00 for the half-hour task of scrubbing out the toilet bowl which had been defaced with black streaks shown in a photo submitted into evidence, evidently caused by the tenant's effort to unblock the pipes with a plumber's snake. The total cleaning claim is \$170.00.

The tenant disputed the claims for cleaning and testified that the walls had been washed down prior to vacating and that they had a witness available to testify about the clean-up done by the tenant. The tenant pointed out that they never signed the addendum containing the prohibition on smoking in the unit. In regards to the area under the stove, the tenant disputed the landlord's claim that the appliances were on casters and testified that they were not able to move the appliances out without risk. The tenant testified that the carpets were shampooed and the floors cleaned. In regards to the toilet defacement, the tenant acknowledged that this did occur due to use of the plumber's snake but added that this was an urgent measure because the tenant was unable to reach the landlord at the time.

The landlord testified that the tenant caused a hole in the door and furnished photos showing this damage and stated that it will take two hours of labour to repair for \$40.00 in compensation. The tenant acknowledged that the tenant damaged the door but pointed out that the door had previously been patched in two other spots for damage that occurred prior to the tenant moving in, as shown in photos submitted by the tenant.

The landlord was claiming \$100.00, for five hours labour to repair the fire-brick veneer installed around the woodstove. The photos in evidence show that some of the brick had chipped away leaving the parts of the bare plywood surface showing through around the edges of the platform. The landlord stated that identical brick installed in the landlord's home at the same time 15 years ago, was still in pristine condition. The tenant disputed the claim and pointed to the move-in inspection report where the tenant had commented, "*bricks breaking away from front of woodstove stand*". The tenant's position is that the surface was already compromised when they took possession and that the damage was merely due to wear and tear.

The landlord was claiming \$40.00 for damage to the wallpaper and furnished photographic evidence showing that the five-year-old wallpaper had been torn in several places, requiring the removal of the paper and repainting of the wall. The tenant disputed this claim. The tenant had offered to re-wallpaper the wall using spare rolls of

matching wallpaper left in the unit and the landlord was not receptive to the tenant doing the repair work, so it was left. The tenant objected to being charged after the fact.

The landlord was also claiming 10 hours of labour in the amount of \$200.00 for yard cleanup for removing rocks brought in by the tenant, pallets, lawn mowing and clean-up. The landlord had submitted photos into evidence showing various areas of the yard, including pallets left outside and in the woodshed where the tenant had kept wood stacked on the pallets. The tenant disputed the charges, stating that the tenant came and picked up the pallets and rocks and that the yard was left in better condition than when they arrived. The tenant testified that the fire-pit was not in good shape and that they had to fix it up to use it. The tenant submitted photos showing the yard as it was upon arrival and after the work was done to improve it. The tenant also submitted a photo of the area where the pallets were later taken away by the tenant.

The landlord was also claiming compensation of \$80.00 for a hole in the wall of the shop that was caused by the tenant. The landlord testified that the tenant had agreed to pay for the cost of the repair. The landlord acknowledged that the tenant had offered to repair the damage, but the landlord stated that he did not agree to allow the tenant to do the repairs for fear that it would not be done correctly.

### **Analysis: Landlord's Application**

In regards to the right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with the 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 authority to determine the amount and to order payment under these circumstances. I find that in order to justify payment of damages, the applicant must prove that the other party did not comply with the Act and that this resulted in costs to the applicant, pursuant to section 7. 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 address the situation and 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 provide and 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 to the rental unit or common areas 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.

I find that, whether or not there was smoking or pets in the unit, a tenant is still required to leave the unit in a reasonably clean state. I accept the tenant's testimony that cleaning was done by the tenant. However, it is evident that some extra cleaning may have been necessary in order to return the unit in a reasonably clean and sanitary condition, particularly in a unit where the occupant had smoked inside. I do not, however, find the tenant responsible for cleaning under the appliances, which I accept were not on casters and the condition of which were not shown to the tenant during the move-in inspection tour. I accept that the carpets were shampooed by the tenant as evidenced by the tenant's photos during the process. That being said, some areas of the carpets appeared to be less-than-clean in the close-up photos submitted into evidence by the landlord and it is clear that they likely needed vacuuming. I find that the landlord is entitled to four hours of general cleaning at \$15.00 per hour and an additional one-half hour for the toilet for total compensation of \$67.50.

In regards to the hole in the hollow-core door admittedly caused by the tenant, I find that it is not clear how old this door was but the average useful life of a door is estimated at 20 years. Given that the door had been previously damaged and patched in two spots, I find it likely that this door should have been replaced some time ago. I find that the pro-rated replacement value of a previously damaged door of that vintage would not justify an expenditure of \$40.00 and it would be unfair to expect the tenant to pay this amount. Accordingly I set the compensation at \$5.00.

In regards to the brick fire-stop veneered surface, I agree that this finish was in obvious need of repair. However, I accept the tenant's testimony that the surface was already beginning to deteriorate when they arrived as noted in the inspection report. I find that the finish had existed for approximately 15 years with the tenant's use only encompassing the latter two years of that period, which may have been the point that

normal wear and tear started to become evident. I find it would not be appropriate to allocate the cost of repairs to this tenant without proof that the tenant alone had been misusing the surface in some manner. Therefore, I find that the landlord is not entitled to any compensation and that this portion of the landlord's application must be dismissed.

In regards to the landlord's claim for damage to the wallpaper, I find that the damage was evident and that it occurred during the tenancy. However, because the average useful life of interior paint and wallpaper is set at approximately 5 years, I find that the pro-rated replacement value owed by the tenant at this point would be nothing.

In regards to the yard cleanup, I find that it is not clear whether the tenant demanded the return of the pallets and rocks or whether the landlord insisted upon this. It would appear that the rocks added by the tenant had improved the landscaping and that some of the pallets had actually served a functional purpose. In any case, the tenant evidently came back and took these items away after the landlord had filed for dispute resolution. In regards to the other yard clean-up and mowing of the lawn, I find that the tenant's photos of the yard taken when they first arrived and the ones taken just before they left were comparable with little evidence of any serious damage. I accept that some work needed to be done as evidenced by the presence of beer cans left on the premises. I find that the landlord is entitled to a nominal amount of \$20.00 for the yard work.

In regards to the landlord's claim for compensation of \$80.00 to repair the hole in the plywood wall of the shop, I find that the tenant had offered to do the repair and that the landlord did not give the tenant the opportunity to mitigate the amount of damages by doing the labour. This fails to meet element 4 of the test for damages. Therefore, I find that the landlord is only entitled to the cost of materials for the repair. I find that the tenant must reimburse the landlord in the amount of \$20.00.

I find that the landlord is entitled to total compensation of \$112.50.



### **Analysis: Tenant's Application**

In addition to the return of the tenant's \$350.00 security deposit, plus interest, the tenant has submitted a claim for \$16,800.00 which represents the equivalent of 100% of the rent paid for 24 months of the tenancy. The basis of the claim, according to the tenant is the landlord's failure to ensure that leaks in the roof were repaired and neglecting to provide proper ventilation, which according to the tenant resulted in health problems occurring during the tenancy. In particular, the tenant testified that one of the inhabitants developed asthma and other health problems which the tenant attributes to the condition of the premises.

I find that the tenant did not provide sufficient evidence to meet the test for damages and to support this monetary claim. Accordingly, the portion of the tenant's application for damages is dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation of \$112.50 for cleaning and repairs. The landlord is ordered to retain this amount from the security deposit and interest of \$358.77 being held on behalf of the tenant leaving a balance in favour of the tenant of \$246.27. I hereby issue a monetary order for the tenant in the amount of \$246.27. 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.

I find that each party must pay its own costs for filing the applications.

November

Date of Decision

\_\_\_\_\_  
Dispute Resolution Officer