



# 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>	The 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

The hearing was convened to deal with an application by the tenant for the return of the \$575.00 security deposit under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid by the tenant for this application. The tenant's application included a claim for one-half a month's rent pursuant to an agreement between the parties.

However, at the outset of the hearing, this claim was withdrawn as resolved.

This Dispute Resolution hearing was also convened to deal with an application by the landlord for a monetary claim for 1,320.20 for cleaning, painting, and carpet repair and replacement.

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

### 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 was also seeking to defend against the landlord's claim to keep the deposit and the landlord's claim for damages stemming from the tenant's early ending of 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?
  - Did the tenant furnish a forwarding address in writing to the landlord?
  - Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
  - 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 damages, payment of arrears in rent for the month of December 2008 and compensation for one month's rent loss due to 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 damages. This determination is dependant upon answers to the following questions:
  - Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?

- 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?
  - there was a violation of the Act or Agreement by the tenant?
  - has the landlord proven that the amount or value being claimed is justified and
  - has the landlord made reasonable effort to minimize the damages?

The tenant has 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 has the burden of proof to show that compensation for rent and damages is warranted.

### **Background and Evidence**

The tenant had terminated the tenancy on June 14, 2009 and provided a written forwarding address to the landlord on July 14, 2009.

The landlord testified that the tenancy began on April 15, 2009 with rent set at \$1,150.00 and that a security deposit was paid in the amount of \$575.00. The landlord applied November 5, 2009 for dispute resolution to keep the deposit and for damages

The landlord testified that when the tenant vacated mid July there was a mark on the mantle that had to be repainted at a cost of \$30.00, the carpets were not steam-cleaned in compliance with the tenancy agreement, costing \$182.70. The landlord had submitted into evidence copies of invoices. The landlord testified that the tenant had left a stain on the bedroom carpet which was treated by carpet professionals without

success. The landlord supplied photographs of the carpet after cleaning showing a red stain with diameter of about 12 inches on the white carpet . The landlord testified that the affected area was then patched with replacement carpet at a cost of \$126.00 and supplied a photograph showing that the replaced area was visible. The landlord and witness testified that the repair was obvious to the viewers looking at the unit for purchase and the realtor had advised the owners that the bedroom carpet needed to be completely replaced or the value of the sale would be impacted. The landlord testified that the estimated cost to replace the bedroom carpet was \$913.50 and the landlord was seeking compensation for the replacement cost.

The tenant agreed to the \$30.00 charges for repainting of the mantle and did not dispute that the carpeting in the unit was not steam-cleaned by professionals. The tenant also acknowledged that the carpet in the bedroom was stained by the tenant. The tenant pointed out that a white carpet is more prone to wear and tear and damage and stated that the location of this damage was in an area that could be covered by the placement of the bed or other furniture. The tenant stated that she was not given an opportunity to obtain her own estimates on the replacement. The tenant testified that she believed that funding the cost for an entire replacement was not warranted and felt that she should only be required to contribute a portion of the costs.

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

#### **Return of Security Deposit**

The landlord has made application to retain the deposit for claimed damages while 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.

I find that 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 and the forwarding address given on July 14, 2009 and the landlord did not apply to keep the deposit within 15 days of the date the tenancy ended and the address obtained.

Based on the above, I find that the tenant is entitled to a refund or credit of \$1,150.00 which represents double the \$575.00 security deposit paid.

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

#### **Damages**

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 to order payment under these 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 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.

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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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. A tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant. However, a tenant is not required to make repairs for reasonable wear and tear.

I find that the tenant was in violation of the agreement and section 37 of the Act by not having all of the carpeting steam-cleaned at the end of the tenancy and by leaving unrepaired damage to the bedroom carpet. I do not accept the tenant's argument that the stain was normal wear and tear.

Given the above, I find that the landlord is entitled to a total monetary compensation of \$1,151.20 comprised of \$30.00 for the repainting of the mantle, \$182.70 for carpet cleaning and \$913.50 for the estimated cost of carpet replacement and a portion of the cost of the application in the amount of \$25.00. The portion of the landlord's application requesting \$126.00 for the patching of the carpet is dismissed.

### **Conclusion**

Based on the testimony and evidence, I find that under the Act, the tenant is entitled to a security deposit refund of \$1,150.00.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation of \$1,151.20.

Pursuant to my authority under section 72 of the Act, I hereby order that the landlord retain the tenant's security deposit refund in the amount of \$1,150.00, in full satisfaction of the claim. As the difference due to the landlord of \$1.20 is minimal, I decline to issue a monetary order for this amount.

Date of Decision  
November, 2009

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Dispute Resolution Officer