

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order to retain the security deposit, in satisfaction of their claim for damage and loss, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 16, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony and documentary evidence. The Tenant is deemed to be served the hearing documents on July 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord and two resident managers appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 under the *Residential Tenancy Act*?

### Background and Evidence

The tenancy began on September 1, 2001 as a fixed term tenancy which switched to a month to month tenancy after August 31, 2002. The rent was payable on the first of each month in the amount of \$1,025.00 and a security deposit of \$512.50 was paid by the Tenant on August 7, 2001.

A move-in inspection report was completed by both parties on September 1, 2001. The Landlord attempted to reach the Tenant to schedule a move-out inspection and after

dialling disconnected telephone numbers the Landlord sent the Tenant a written final notice to attend a move-out inspection, via registered mail on June 25, 2009. The Landlord referred to his documentary evidence in support of his testimony that the written final notice to attend the move-out inspection was sent to the Tenant at the forwarding address provided to the Landlord by the Tenant. The move-out inspection was conducted on June 30, 2009 in the absence of the Tenant.

The Landlord testified that he is seeking to keep the security deposit in satisfaction of the losses he suffered, as a result of the condition the Tenant left the rental unit in, and as noted on the suite inspection form.

The Landlord argued that the Tenant left the rental unit without cleaning and the Landlord had to pay \$360.00 to have the rental unit cleaned by a professional cleaner as supported by the Landlord's documentary evidence.

The Landlord testified that the Tenant stripped the rental unit of light bulbs and two light fixtures, one from the kitchen and one from the bedroom. The Landlord argued that it cost him \$16.88 to replace the twelve light bulbs that the bedroom light shade was approximately 35 years old and cost \$11.19 to replace and the kitchen light fixture was a fluorescent light fixture which was new in July 2000 and cost the Landlord \$60.00 to replace. The Landlord is claiming for 10% of the cost of drapes he purchased for the rental unit to replace white window shears which were damaged by the Tenant. The Landlord argued that the shears were new in July 2000 and the Tenant left them shredded and ruined as displayed in the picture evidence.

The Landlord argued that while his losses add up to more than the amount of the Tenant's security deposit and interest, he is only seeking to retain the security deposit, interest, and to recover the cost of the filing fee from the Tenant.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord 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, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, 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.

The evidence supports the Landlord's testimony that they complied with section 35 of the *Act* when issuing the Tenant a written final notice to attend the move-out inspection and when the Landlord conducted the inspection in the Tenant's absence. That being said I find the Tenant to be in contravention of section 35 of the *Act* by not attending the move-out inspection.

Based on the documentary evidence, picture evidence, and testimony before me I find that the Tenant failed to clean and repair damage to the rental unit at the end of the tenancy and I find that the Tenant has contravened section 37 of the *Act* which states that a tenant must leave the rental unit reasonably clean and undamaged except for

reasonable wear and tear. Based on the aforementioned I find that the Landlord has proven his case for damage and loss as follows:

**Suite Cleaning** – The Landlord provided evidence of the actual cost to clean the rental unit in the amount of \$360.00 which consisted of 18 hours of labour at \$20.00 per hour. I hereby allow the Landlord's claim of \$360.00.

**Bedroom Light Shade** – The testimony supports that the light shade was approximately 49 years old and based on the *Residential Tenancy Policy Guidelines* #37 the normal life expectancy of a light shade is 15 years. That being said the bedroom light shade was past its life expectancy so I hereby dismiss the Landlord's claim of \$11.19 for the light shade.

**Light Bulbs** – The testimony and pictures supports that the Tenant removed the light bulbs from every light fixture in the rental unit except for the bathroom. *Residential Tenancy Policy Guidelines* #1 stipulates that a tenant is responsible for replacing all light bulbs during the tenancy and ensuring all light bulbs are present and working at the end of the tenancy. Based on the aforementioned I hereby approve the Landlord's claim of \$16.88.

**Kitchen Light** – The pictures and move-out inspection report supports the Landlord's statement that the Tenant removed the kitchen light fixture leaving bare wires hanging from the ceiling. The Landlord testified that the kitchen light was installed in July 2000, one year prior to the beginning of this tenancy. *Residential Tenancy Policy Guidelines* #37 stipulates that the normal life expectancy of a light fixture is 15 years. That being said I hereby approve the Landlord's claim in the amount of \$88.00 (\$60.00 x 9/15 for cost of light and \$52.00 labour to purchase and install = \$36.00 + \$52.00)

**Drape Replacements** – The Landlord testified that the rental unit had new white window shears installed in July 2000 and the Landlord replaced the torn and shredded shears with fabric drapes at a cost of \$1,144.64. The testimony supports that there are five windows in the rental unit and the shears were approximately nine years old and of

a lesser value than fabric drapes. Based on a life expectancy of 15 years and the approximate value of \$36.50 for window shears I hereby approve the Landlord's claim in the amount of \$21.90 ( $\$36.50 \times 9/15$ ).

**Filing Fee** – As the Landlord has been successful with his claim I find that he is entitled to recover the \$50.00 filing fee from the Tenant.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit and interest, and that the Landlord is entitled to recover the filing fee from the tenant as follows:

Cleaning of the rental unit	\$360.00
Light Bulbs	16.88
Kitchen Light Fixture purchase and installation	88.00
Replacement of window coverings (shears)	21.90
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$536.78</b>
Less Security Deposit of \$512.50 plus interest of \$24.57 from August 7, 2001 to November 4, 2009	-537.07
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$0.29</b>

As the balance owing on the security deposit is less than one dollar, a monetary order will not be issued.

### Conclusion

I HEREBY ORDER the Landlord to retain the Tenant's security deposit and interest in the amount of \$537.07 in full satisfaction of the Landlord's claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 03, 2009.

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Dispute Resolution Officer