



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision: Review Hearing**

#### **Dispute Codes:**

<u>MNR</u>	Unpaid Rent
<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 re-convened as a re-hearing of the original application which was heard on November 2, 2009. The landlord was not able to access the original conference call and therefore did not attend the initial hearing. The landlord made an application for a review consideration which was granted in a decision dated November 23, 2009. This re-hearing was set to deal with an application by the landlord for a monetary order for damages and rent owed and to keep the security deposit as compensation for costs to clean and repair the unit. The landlord was also seeking to be compensated for the cost of the application.

Both the landlord and tenant appeared and each gave affirmed testimony in turn. A witness for the landlord also appeared.

#### **Issue(s) to be Decided**

The amount of the claim shown on the application was \$2,375.00. The landlord indicated that it was seeking a monetary order for \$500.00 for loss of rent for the month of July 2009 due to the tenant's failure to provide the required one month written notice to end tenancy. The landlord was also seeking compensation of \$250.00 for garbage removal and \$300.00 for cleaning and repairs to the bathroom. In addition, the landlord was seeking reimbursement for a loan of \$500.00 given to the tenant during the tenancy. No details were provided in regards to the remaining \$825.00 claimed.

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 and loss of rent. This determination is dependant upon answers to the following questions:
  - Has the landlord submitted proof that the specific amount of rental loss claimed was caused by the tenant?
  - Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

### **Background and Evidence**

The landlord testified that the tenancy began on January 6, 2007 and that rent was \$500.00 per month, which the tenant often paid in partial amounts. A security deposit of \$250.00 was paid.

The landlord testified that near the end of June 2009, the tenant gave short notice to move and did not provide any written notice. The landlord testified that when the tenant vacated, furnishings and possessions were left that had to be removed, the bathroom was damaged and the unit was not clean. The landlord provided photos of the unit showing furnishings and bags of items left. The landlord testified that the tenant had told the landlord that the possessions would be picked up by a charitable organization. However, when the landlord called the charity, they were informed that no arrangement for pick-up was made. The landlord testified that they paid \$250.00 for garbage removal and supplied a copy of the receipt for payment. The landlord's witness confirmed that the furnishings were left and that the stove and refrigerator appeared not to have been cleaned.

The landlord testified that the tenant had caused damage to the tiles in the bathroom by not keeping them clean and that the amount of damage was increased due to the tenant's failure to report the problem. The repairs also delayed re-rental and the unit has not been rented to date as it had to undergo a renovation. The landlord was requesting compensation of \$500.00 for the loss of rent and \$300.00 for the repairs

The landlord testified that during the tenancy, the tenant requested a loan of \$2,000.00 but was given \$500.00 on loan which was never repaid.

The landlord testified that they were unable to re-rent the suite immediately because of the clean-up and due to repairs required to fix the damage in the bathroom caused by the tenant.

The tenant conceded that items were left for disposal, but stated that the landlord had told him to place the items for pick-up. The tenant also acknowledged that he did not provide written notice to vacate but stated that he did verbally advise the landlord of his intention to leave well in advance.

The tenant disputed the remaining claims and testified that the unit was left in a reasonably clean condition except for the items left. The tenant denied causing damage to the bathroom and stated that the landlord was told about the problems with the tiles and the leaks. The tenant denied receiving a loan from the landlord.

## **Analysis**

### **Loss of Rent**

In regards to the landlord's claim for the loss of rent, the landlord attributed this to the delay for disposal of the items and repairs and renovations of the suite.

I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. 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.

However, 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.

I note that there would be a violation of the Act under section 37 (2)(a) should the tenant fail to leave the rental unit reasonably clean, and undamaged *except for reasonable wear and tear* upon vacating it and the tenant would be liable for any costs or losses incurred by the landlord that flow from the tenant's failure to comply with the Act.

In this instance I find that the landlord was left with some tasks that needed to be done after the tenant left. I find that both parties agreed that the tenant left possessions on site and it is clear that the landlord incurred costs for their removal. I find that the claim for \$250.00 for garbage removal meets the test for damages and the landlord is entitled to compensation.

I find that the tenant did violate the Act by not providing one-month of written notice to the landlord. I find that the landlord has proven that it incurred a loss of rent for the month of July and beyond. However, I find that the landlord's inability to re-rent and corresponding loss of rent for the month of July 2009, was not due to the short notice provided by the tenant but was related primarily to the fact that the bathroom required extensive repairs.

I find that, although the landlord attributed the damage to the actions or neglect of the tenant, the landlord has not proven that the bathroom repairs were not due to normal wear and tear. Under the Act, all fixtures, plumbing and structural failures are normally the responsibility of the landlord to maintain, repair or replace. Given the above, I find it would not be the responsibility of the tenant to reimburse the landlord for the \$500.00 loss of rent due to delay while the bathroom was being renovated and this portion of the landlord's application must be dismissed. I also find that the tenant would not be responsible for the cost of any of these repairs.

In regards to the cost of cleaning the unit, I find that under the Act, the tenant was only required to leave the unit reasonably clean and other than items left, the landlord failed to sufficiently prove that this was not the case. I find that this portion of the landlord's application must be dismissed.

In regards to the purported loan arranged between the parties during the tenancy and the tenant's alleged default on payment, I find that this is not a matter over which I have been granted the authority under the Act to determine since it relates to a contract other than a tenancy agreement. Accordingly, I find that this portion of the landlord's application must be dismissed

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$250.00 for garbage removal. I order that the landlord may retain the tenant's security deposit in full satisfaction of the claim. The remainder of the landlord's application is dismissed without leave.

January 2010

Date of Decision

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Dispute Resolution Officer