



# 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 set to deal with an application by the landlord for a monetary order for damages for repairs and cleaning, rental arrears and loss of rent 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 testimony in turn.

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

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 rental arrears, loss of rent and other damages. This determination is dependant upon answers to the following questions:
  - Has the landlord proven that rent was owed but unpaid?
  - Has the landlord proven 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*?

### **Preliminary Issue**

The landlord had submitted evidence in support of the claim, which he testified had been sent to the tenant by registered mail on February 17, 2010, the same day as the evidence was submitted to the Residential Tenancy Branch to the file. However the tenant stated that this evidence had never been received. Additional late evidence was also received by Residential Tenancy Branch from the landlord on February 22, 2010, the day before this hearing. The tenant stated that this evidence was not received by the tenant.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that *“copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..”* Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents or other evidence that the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding at least two (2) days before the proceedings when there is not sufficient time prior to the scheduled date.

If copies of the evidence are not served on the respondent or the applicant as required, and provided the evidence is relevant, the Dispute Resolution Officer must make a decision as to whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. In any case, if the need for this evidence was accepted, then the other party must be given an opportunity to review the unseen evidence before the application can be heard. Therefore a determination must be made about whether or not the matter should be adjourned to be heard at a future date to allow service of the evidence on the other party.

In this case, regarding the landlord's evidence served by registered mail on February 17, 2010, it was determined that the landlord should be permitted to verbally reference this information and photographic evidence, describe it in the oral testimony, and the tenant would then be permitted to respond to the landlord's testimony.

In regards to the landlord's late evidence, arriving the day prior to the hearing and not yet received by the tenant, it was decided that this evidence would not be considered.

### **Background and Evidence**

The tenancy began in May 2003 and the most current rent was \$1,600.00 per month. A security deposit of \$800.00 was paid. A written tenancy agreement was apparently signed, but only the addendum was placed in evidence by the landlord.

The landlord testified that near the end of July 2009, the tenant gave written notice to vacate at the end of August 2009. The tenant disputed this date and testified that the landlord was given written notice in May and also that effective date given for the end of the tenancy was going to be the end of July 2009, however the tenant did not submit any evidence confirming the date of the tenant's notice.

The landlord testified that it appeared that the tenant was still occupying the unit until the end of August 2009 – as the tenant's personal possessions were still there on August 31, 2009, and the tenants had not informed the landlord that they had completely moved out nor did they participate in a move-out inspection.

The tenant testified that by August 1, 2009, they had vacated and the landlord was well aware of this, as confirmed by the fact that the landlord's agent had contacted the tenant at their new location in mid August 2009 in order to obtain keys to show the unit.

The landlord was seeking the rent that was unpaid for the months of July 2009, August 2009. The landlord was seeking compensation for September 2009 because the condition of the unit prevented immediate re-rental due to the amount of cleaning and repairs. The landlord was also claiming compensation for the expenses of cleaning and repairing the rental unit. The amount of the landlord's monetary claim shown on the application was \$6,723.00 and the specific claims are discussed in detail below.

### Rental Arrears

The landlord indicated that it was seeking unpaid rental arrears of \$1,600.00 for the month of July 2009, and \$1,600.00 for the month of August 2010 . for a total of **\$3,200.00 rental arrears**. The tenant did not dispute that no rent was paid for July 2009 and no rent was paid for August 2009, but objected to being charged for August on the basis that the tenant had allegedly already moved out.

### Loss of Rent

According to the landlord, at the end of August, 2009, a substantial amount of furniture and other possessions belonging to the tenant remained in the house. The landlord testified that it was not clear when the tenant had actually vacated. However, attempts were made to show the house during the month of August 2009 in preparation to re-rent it for September 1, 2009 and the landlord testified that these attempts were not successful due to the dirty and damaged condition that the rental unit was left in by the tenant. The landlord stated that the rental unit was not re-rented until the end of September 2009 and the landlord's position was that the delay in re-renting was due to the tenant's failure to leave the premises in a reasonably clean condition and the time it took to restore the rental premises. The landlord was claiming compensation of **\$750.00 loss of rent** for September 2009.

The tenant disputed the \$750.00 claim for loss of rent for September on the basis that the landlord was aware that the tenant would be vacating by August 1, 2009, and had a substantial amount of time to work on the vacated unit during August. The tenant pointed out that the landlord's agent contacted the tenants at their new location in mid-August to obtain the keys to the rental property. The tenant also stated that the rental unit was already occupied in mid-September by new tenants.

### Garbage Removal

The landlord testified that by September 21 2009, after finding it necessary to store the tenant's possessions in the garage, it became obvious that the tenant was not going to return to remove any more items. The landlord advised the tenant that the possessions would be transported to the tenants at their new location. However, he was informed by the tenant that they did not want the items that had been left and the landlord made

arrangements to have some hauled to the dump and others donated to charity. The landlord was claiming \$280.00 costs for the 7 hours spent by two persons each at the rate of \$20.00 per hour including travel time and \$33.00 for the dump fees, for a total amount of **\$313.00 for garbage disposal.**

The tenant acknowledged that the items were abandoned and that garbage was left in the rental unit, but stated that the cleanup would have only taken a couple of hours at the most.

### Cleaning

In regards to the costs for cleaning the stained carpets, the landlord testified that he spent 14 hours cleaning the rugs and at \$20.00 per hour, hopes to be compensated in the amount of \$280.00 plus the \$44.80 cost of renting the equipment for a total of \$324.80. The landlord spent 2 hours addressing the scratches on the hardwood floors at a cost of \$40.00.

The tenant acknowledged that the carpet was not vacuumed or shampooed, but pointed out that the carpeting was not in clean condition when the tenancy began in 2003. The tenant objected to the \$364.80 being claimed by the landlord for restoring the floors.

The landlord testified that the cleaning of the rental unit was done by several individuals. A cleaning company invoiced him for 20 hours of labour at \$15.00 per hour for cleaning done on September 14, 15, 16, and 17 adding up to \$300.00 and he paid another cleaner \$172.00 for a total cost for professional cleaning of \$472.00. The landlord also spent 7 hours removing adhesive from the walls at a cost of \$140.00 and spent time cleaning up and treating mouldy areas costing \$60.00. The cost of cleaning and mould control supplies was \$11.96, \$11.17 and \$23.93. The interior house cleaning expenditure totals \$719.06.

The tenant acknowledged that the rental unit was not left in a clean condition, but pointed out that it was not very clean when they took possession either. The tenant disputed the \$719.06 claimed by the landlord for general interior cleaning. The tenant stated that the mould left by the leaking of the tenant's washer should have been submitted by the landlord as a claim on his building insurance.

The landlord testified that the yard work was part of the tenancy agreement and referenced item 6 in the tenancy agreement Addendum which stated, "*House cleanliness is expected as well as general tidy well kept yard maintenance. Necessary tools/equipment for yard maintenance are the tenants responsibility.*" The landlord stated that the yard was left in an over-grown neglected condition requiring significant clean-up by a professional firm that charged \$254.10 and 4 hours of his own labour valued at \$80.00. The landlord testified that the outdoor cleanup involved lawn mowing, trimming foliage, weeding and removing yard waste with a total value of \$334.10.

The tenant disputed that the yard was neglected and stated that general maintenance was done until the tenant vacated, after which the yard was completely under the control of the landlord. The tenant did not agree that the tenancy agreement required complete landscaping or gardening work by the tenant. The tenant did not agree to any costs in relation to the yard taking the position that it deteriorated after the tenant left.

The total monetary claim for all cleaning including the \$364.80 for floor maintenance issues, \$719.06 for interior general cleaning and \$334.10 for yard work adds up to **\$1,417.96** for materials, labour and professional fees.

#### Repairs and Replacement Items

The landlord testified that the tenant was given permission to supply their own appliances during the tenancy. However, when they vacated, they failed to move the landlord's appliances from the garage back into the home. The landlord is claiming \$17.26 for the dolly rental, and \$40.00 to move the appliances upstairs.

The landlord was claiming \$103.68 for damage caused to a cabinet drawer which included \$43.68 materials and \$60.00 labour. The tenant disputed this stating that it had been glued previously and was weakened.

The landlord was claiming \$148.09 to repair a washing machine pump which included \$108.09 materials and \$40.00 labour. The tenant pointed out that the washer was the tenant's and was left there to replace the landlord's original washer.

The landlord was claiming \$120.00 to repair linoleum that he stated had been torn in the move. The tenant's position was that the flooring was already in poor condition.

The landlord was claiming \$33.02 to replace garbage cans, \$21.26 to replace the garden hose, \$9.50 for a new showerhead, \$33.69 for heat vent cover. The tenant stated that they knew nothing about the missing garbage cans or hose and had left the landlord's original showerhead under the sink in the bathroom.,

The landlord testified that a new lockset was required and that the entry doors had to be rekeyed so that they matched and is claiming \$31.33 for the lockset, \$9.03 for cut keys, and \$57.13 for re-keying the entry doors. The tenant did not agree that any of the locks needed to be replaced.

The landlord testified that additional damage was left that could not be attributed to normal wear and tear. This included damaged hardwood valued at \$1,600.00, broken acrylic bathtub handle valued at \$1,400.00, bent garage door valued at \$360.00, kitchen lino damage valued at \$1,100.00, replaced broken French door at a cost of \$325.00.

## **Analysis**

### **Rent**

In regards to the landlord's claim for rent owed, section 26 of the Act provides that rent must be paid when it is due. I find that the tenancy was to end on August 31, 2009 and the landlord is entitled to rent of \$3,200.00 for the months of July and August 2009.

### **Loss of Rent**

In regards to the loss of rent, the landlord attributed this to the delay for disposal of the tenant's items and cleaning and repairs to 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 was a violation of the Act under section 37 (2)(a) being that the tenant failed 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 this tenant's failure to comply with the Act.

In this instance I find that the landlord was left with a substantial amount of work that needed to be done after the tenant left and this work would take time to do. I find that the landlord set about preparing the unit to re-rent and, in fact, made efforts to find a tenant during the month of August 2009, to no avail. I find that it would not be reasonable to expect that rent for any portion of September to be charged when the tenant's possessions had not been dealt with by the tenant until mid-month when the



landlord had to do the job. I find that there was a loss of rent for September in the amount of \$1,600.00

#### Analysis: Garbage Removal

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 landlord's claim for \$313.00 including \$33.00 in dump fees was justified and that the landlord is entitled to that amount.

#### Analysis: Cleaning

I find that the tenant did not leave the carpeting in a reasonably clean condition and that it required both vacuuming and shampooing. Although the landlord's claim of 14 hours seems excessive, I find that a professional cleaner likely would have charged the amount being claimed to complete the job. I also find that the landlord's claim of \$40.00 to address the floor scratches to be reasonable. I find that the landlord is entitled to \$364.80 for cleanup of the floors.

I find that the interior fixtures and appliances, including windows were not left in a reasonably clean condition and I find that the billing for 20 hours of labour is reasonable \$300.00. I find that the cleanup of the mouldy areas would warrant the \$60.00 claimed. I dismiss the landlord's claim for additional cleaning of \$172.00 as the landlord failed to prove what this entailed. In regards to the \$140.00 claimed for the time spent in removing self-stick tape, I find that \$60.00 is warranted. I also find that the landlord is entitled to reimbursement of the cost of cleaning supplies in the amount of \$47.06. The total entitlement for the general interior cleaning is \$467.06.

I accept that basic yard work was required as part of the tenancy. I find that this would be restricted to mowing the lawn, keeping the grounds tidy and minimal weeding or trimming by the tenant. I find that the tenant vacated without reasonable attendance to the condition of the yard and find that the landlord is entitled to be reimbursed in the amount of \$150.00 for part of the yard work.

Given the above, I find that the amount to which the landlord is entitled for all of the cleaning is \$981.86 for materials, labour and professional fees.

### Analysis Other Repairs & Replacements

I find that the tenant was given permission to supply their own appliances but were then required at the end of the tenancy to move the landlord's appliances back into the home, which the tenant failed to do. I find that the landlord is entitled to be reimbursed the \$40.00 to move the appliances upstairs and the \$17.26 for the dolly rental amounting to \$47.26 for the job.

In regards to the claim for \$103.68 to fix the cabinet drawer, I find that the landlord is entitled to compensation, but the amount must be pro-rated to reflect the age and wear and tear to the cabinet. Accordingly I find that the landlord is entitled to \$70.00.

In regards to the \$148.09 claimed to repair the washing machine pump, I find that the maintenance of appliances is a responsibility of the landlord and therefore this portion of the landlord's application is dismissed.

In regards to the \$120.00 for repair of the linoleum, I find that the landlord is entitled to be compensated for this repair expense in the amount of \$120.00.

In regards to the \$33.02 to replace garbage cans, \$21.26 to replace the garden hose and \$9.50 for a new showerhead, I find that these claims were not sufficiently proven and must be dismissed.

In regards to the landlord's claim that one of the locksets had been changed by the tenant requiring expenses to restore, I find that if there was a necessary repair to a lockset during the tenancy, the landlord would have been required to repair it.

Moreover the Act places the responsibility for re-keying locks, when asked by new tenant on to the landlord. Therefore, I find that these expenditures to the landlord may have been incurred in any case. Therefore the portion of the landlord's application relating to the claims for locks is dismissed.

I find that the landlord's claims for damaged hardwood floors valued at \$1,600.00, broken acrylic bathtub handle valued at \$1,400.00, bent garage door valued at \$360.00, and kitchen linoleum replacement valued at \$1,100.00 did not satisfy all elements in the test for damages and therefore, they all must be dismissed.

However, I find that the amount claimed to replace the broken French door with a solid door is supported by the facts and the landlord is entitled to be reimbursed the \$325.00.

### **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 \$6,757.12 comprised of \$3,200.00 for rent, \$1,600.00 for loss of rent, \$313.00 for garbage removal, \$981.86 for clean-up, \$562.26 for other repairs and \$100.00 for the cost of this application . I order that the landlord may retain the tenant's security deposit and interest of \$828.34 in partial satisfaction of the claim leaving a balance of \$5,928.78. 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.

February 2010

Date of Decision

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Dispute Resolution Officer