



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MND</u>	For Damage to the Unit, Site, Property
<u>MNSD</u>	To Keep All Or Part Of The Security Deposit
<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 loss of one month rent and compensation for cleaning and damage to the unit.

The landlord's original application submitted on December 15, 2009 was amended on April 7, 2010 to change the claimed cleaning costs of \$20.00 to \$136.50.

Despite being served with the Application for dispute Resolution and Notice of Hearing, as well as the amended application, by registered mail, the tenant did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent for the month of December 2009, late fees and NSF charges, compensation for cleaning and repainting of the suite and the cost of filing.

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 or loss of rent. This determination is dependant upon answers to the following question:
 - Has the landlord submitted proof that damages or loss occurred due to the other party and in violation of the *Act*?
 - Has the landlord established and proven the expenditures or specific loss of value?

- Has the landlord taken all reasonable steps to mitigate the losses?

Background and Evidence

The landlord testified that the tenancy began in August 1, 2007 and a security deposit of \$650.00 and pet damage deposit of \$200.00 was paid. The tenancy was originally for a fixed term but reverted to month-to-month as of August 2008. The current rent was \$1,348.00. The landlord testified that the tenant gave notice on November 19, 2010 to vacate on November 30, 2009. No copy of the tenant's notification was submitted.

The landlord submitted a copy of a form titled "AGREEMENT" that was signed by both the landlord and the tenant on December 3, 2009, listing the end-of-tenancy charges as deductions from the security deposit by consent indicating that the tenant had agreed that the \$200.00 cost for painting and \$20.00 for cleaning could be deducted from the security deposit. Above the signature, is printed: "*ANY REMAINING SECURITY DEPOSIT PLUS INTEREST WILL BE REFUNDED*".

The landlord testified that the tenant had left the unit painted in a shade other than white which was required under the terms of the tenancy, necessitating costs for repainting and the tenant left the unit in need of cleaning. The landlord testified that the unit was not repainted until March because another renter had agreed to accept the colour of the unit. However, that resident had since vacated and the landlord was seeking to have the cost of re-painting paid by the original tenant pursuant to his agreement to pay. The landlord submitted a copy of an invoice for painting dated March 18, 2010.

The landlord also submitted a copy of "*Tenant's Suite Inspection, Key and Security Deposit Form*", indicating that 6 hours of cleaning were required and signed by the tenant on December 3, 2009. The landlord testified that since filing the application on December 15, 2009 claiming cleaning costs of \$20.00 it was found that the cleaning costs were \$136.50.

The landlord testified that efforts to re-rent commenced immediately after the tenant left and copies of an advertisement and some billing records were submitted to verify that the landlord had attempted to mitigate the loss of rent for December by finding another tenant. The landlord testified that the unit was not re-rented until January 2010 and

included a copy of part of a tenancy agreement showing the suite address and the start of the fixed term being January 15, 2010 with no name or signature shown.

Analysis

Loss of Rent and Damages

The landlord's claim for the loss of \$1,348.00 rent for the month of November and the other claims for cleaning and damages the other claims by the landlord for monetary compensation for loss or damage to the suite, are governed by 7(a) of the Act which 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. 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.

It would be a violation of the Act under section 37 (2)(a) if the tenant failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear upon vacating and the tenant would also be liable for any costs or losses that flow from the tenant's failure to comply with the Act, including a loss of rent if the resulting repair work delayed re-rental.

It is also a violation of the Act for the tenant not to provide one Month written notice to end the tenancy, and if it was accepted that this tenant had given Notice to end the tenancy on November 19, 2009 to end effective November 30, 2009, it would also be a violation of the Act and the tenant would be liable for the proven losses that may flow from this failure to comply with the Act.

In this instance, however, I find that at the end of the tenancy there was written agreement signed by both parties stating that the agreed-upon amount owed by the tenant was \$220.00 comprised of \$20.00 for cleaning and \$200.00 for repainting, which would be retained from the tenant's security deposit and specifically stating that the remainder would be refunded to the tenant..

I find that this agreement between the parties which was signed on December 3, 2009, must be honoured. I find that allowing additional claims beyond those mutually consented to would not be consistent with the contract freely entered into by both of these two parties. I find that this agreement cannot be unilaterally altered nor arbitrarily set aside at the behest of one party and to do so would be contrary to natural justice.

Accordingly, I find that the landlord is entitled to retain \$220.00 from the security deposit which was the amount agreed-upon between the parties.

Conclusion

Based on the evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$220.00 pursuant to the agreement and order that this amount be retained from the security deposit of 868.17. I order that the remainder of \$648.17 be refunded to the tenant forthwith and I grant the tenant a monetary order under section 38 of the *Act* for \$648.17. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

April 2010

Date of Decision

Dispute Resolution Officer