



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNDC , MND, MNSD, MNR, FF

### **Introduction**

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended and gave testimony..

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

The landlord was seeking damages and 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 money owed, damages or loss.
- Whether the landlord is entitled to liquidated damages under the contract

The burden of proof is on the applicant landlord to prove the claim.

### **Background and Evidence**

The landlord submitted into evidence a copy of the tenancy agreement, a copy of the move in/out inspection report and a copy of a “cleaning log” showing 7 hours allegedly spent in cleaning the suite.

Also submitted into evidence was a pre-printed “*Security Deposit Refund*” form with a list of items beside which each charge was written in. The “*Deductions*” included:

Liquidation costs	525.00
Carpets	95.00
Drapes	30.00
Cleaning	150.00 (10X15=150)
Cleaning Materials (20%)	30.00
Painting	150.00
Painting Materials (35%)	52.50
Other	150.00 (Garbage Removal)
TOTAL DEDUCTIONS:	1182.50

The landlord testified that the above expenditures were incurred at the end of the tenancy and the landlord was claiming the deposit to set off the amount owed.

The tenant testified that the costs being claimed were not justified. The tenant testified that they had resided in the suite for only two months but felt it necessary to vacate due to serious problems in the building that included firearms, violence and drug activity in the complex. The tenant testified that he fully cooperated in the move-out inspection, and pointed out that none of the above deficiencies or charges were noted during the inspection, with the exception of the alleged need for carpet cleaning. The tenant stated that he had willingly left his forwarding address expecting a residual amount of the security deposit to be returned. The tenant stated that he was never told about any charges or that money was allegedly owed at all and was shocked and upset when almost immediately after the tenancy ended, he started to receive repeated harassing phone calls from a purported collection agency who had apparently been given information about the tenant and the tenancy by the landlord. The tenant stated that he was perturbed by ominous threats made that, should he fail to pay the large amount of money demanded, a negative report would be placed on his credit record affecting his future. As far as the tenant was concerned, at that point, nothing was owed to the

landlord. The tenant stated that the repeated calls continued even after the tenant had received a Notice of Hearing and the tenant stated that he had received a call just prior to the hearing date. The tenant felt that the landlord's actions in using this tactic were inappropriate and should not be allowed.

The tenant acknowledged that he had signed a fixed term tenancy and had consented to the liquidated damages clause of \$525.00. However, the tenant's position was that the tenancy had ended early because the landlord had failed to disclose problem conditions with the suite, particularly the active criminal element present in the building.

### **Analysis**

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the 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.

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 to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt 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. I find that the landlord's "evidence" on this subject consisted of a list of charges composed by the landlord that are entirely unsupported by any genuine evidence including the move-out condition inspection report.

In this instance, I find that the condition inspection report makes no mention of numerous issues for which the landlord has made a claim. In any case, I find that the landlord's cleaning and damage claims do not satisfy even a single element in the test for damages. I would go further to suggest that it appears that these claims were merely arbitrarily imposed by the landlord without any valid justification nor basis in fact.

In regards to the complaint about the landlord's actions in bothering the tenant prior to the hearing and attempting to collect on alleged "damages" that had not been legally established nor proven as required by the legislation, I find that the tenant's concerns about harassment from an apparent agent of the landlord is not a matter that is within my jurisdiction to deal with, given that this hearing was on the landlord's application. That being said, I must point out that section 95(2) of the Act deals with situations where attempts are made by any party to harass or intimidate the other, for example a landlord threatening a tenant who may be contemplating taking steps to exercise his right to make application for dispute resolution seeking the return of the security deposit.

Section 95(2) of the Act states:

- 2) A person who coerces, threatens, intimidates or harasses a tenant or landlord*  
*(a) in order to deter the tenant or landlord from making an application*  
*under this Act, or*  
*(b) in retaliation for seeking or obtaining a remedy under this Act*  
*commits an offence and is liable on conviction to a fine of not more than \$5 000.*

### **Conclusion**

During the hearing, the parties mutually agreed that the landlord could retain the security deposit of \$525.00 in full satisfaction of the landlord's claim for liquidated damages.

The remainder of the landlord's application is dismissed without leave.

April 2010

Date of Decision

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Dispute Resolution Officer