



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

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| <u>MNSD</u> | The Return or Retention of the Security Deposit |
| <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

The hearing was convened to deal with an application by the tenant for the return of double the \$320.00 security deposit under the Act.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$126.00 for the cost of carpet cleaning pursuant to the tenancy agreement and reimbursement for the \$50.00 fee paid for this application.

Both the landlord and tenant were present and each gave testimony in turn.

Issues to be Decided for the Tenant's Application

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and provision of the forwarding address?

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for cleaning, damage and other costs.

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 loss and damages. This determination is dependant upon answers to the following questions:
- Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities that:
 - the costs were incurred due to the actions of the tenant in violation of the Act or Agreement
 - proof of the amount or value being claimed.
 - A reasonable effort has been made to minimize the damages?

The tenant had the burden of proof to establish that the deposit existed and that 15 days had expired from the time that the tenancy ended without the landlord either refunding the deposit or making application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted.

Background and Evidence

Evidence was included by both parties. The tenancy began on December 15, 1999 and ended December 31, 2009. The deposit paid was \$320.00 and the current rent was \$815.00 per month. A move-in inspection was completed and signed. At the end of the tenancy a move-out condition inspection report was partially completed and signed. The tenant made a notation that he did not agree with the landlord's assessment of

damages and added the comment, "Wear and Tear Only". The forwarding address was given on December 31, 2009. The landlord had returned a portion of the deposit in the amount of \$172.49 retaining \$147.51 and a copy of a cheque dated January 13, 2010 was submitted into evidence.

The tenant testified that the landlord had returned a portion of the tenant's security deposit beyond the fifteen days from the written forwarding address being provided as the tenant had not received the refund until January 18, 2010. The tenant's position is that this would warrant a refund of double the deposit. The tenant acknowledged that he did not shampoo the carpet, but objected to the landlord's claim for \$126.00 for the carpet cleaning on the basis that the tenant was given the impression that the costs would be lower. The tenant contended that, at the landlord's stated rate of \$20.00 per hour for labour, he felt that the carpet shampoo only warranted a \$40.00 charge. The tenant testified that they had cleaned the carpet about three times during the tenancy, the most recent being three years prior to vacating. The tenant also pointed out that the carpet was around 20 years old and that there was already burn marks on the carpet that pre-existed the tenancy as evidenced by the Move-in Condition Inspection Report.

The landlord testified that it had partially complied with the Act by refunding \$172.49 within the required 15 days. No confirmation of the date of mailing was submitted into evidence by the landlord. However a copy of the cheque dated January 13, 2010 was submitted into evidence and the landlord testified that the refund of was mailed the same day.

In regards to the \$126.00 claim for carpet cleaning, the landlord testified that there was a clear provision in the tenancy agreement that required professional carpet cleaning. The landlord pointed out that, however, the tenant was at liberty to do the steam-cleaning himself but declined to do so. The landlord acknowledged that the amount deducted and retained from the deposit was more than the \$126.00 cost of the carpet cleaning. The landlord also acknowledged that keeping a portion of the deposit without making an application or obtaining an order, was not in compliance with the Act. The

landlord requested that, if the deposit was to be doubled, the \$172.49 amount already repaid within the 15 day-deadline be deducted from the \$320 and interest first prior to doubling the remainder.

Analysis: Tenant's Application

The tenant has made application for the return of the security deposit.

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either: repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy was ended and the forwarding address was given to the landlord shortly thereafter, under the Act the landlord should either have returned the deposit or made an application for dispute resolution within the following 15 days. However, the landlord retained \$147.5, an amount that exceeded the landlord's supported claim for damages of \$126.00. Moreover, the landlord did not make any application until February 10, 2010 which was beyond the fifteen days and was after the tenant had made an application.

Section 38(6) states: If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord's argument that, its partial compliance with section 38(1) by refunding some of the tenant's deposit within 15 days, would serve to temper section 38(6)(1)

making the penalty only applicable to the portion of the deposit retained, appears not to be supported by specific wording in the Act.

Section 38(6) (a) actually prohibits a landlord from making a claim against the deposit when section 38(1) has not been followed. Therefore, even if the damages claimed by the landlord were found after-the-fact to be warranted, these amounts could not be considered to be “*a claim against the deposit*”. The deduction for valid damages would function to protect the landlord from incurring the liability of double the deposit under section 38(6) (b). The landlord’s claim falls within the category of *damages*, and I find that, under the Act, damages cannot be validly awarded without an order. Accordingly, it is not possible to retro-actively categorize the expenditures incurred to be a claim against the deposit.

Section 38(6)(b) imposes a compulsory requirement that the landlord must pay double the amount of the deposit. I find that the amount of the deposit as of the end of the tenancy was \$320.00 paid in 1999 and after the fifteen days had expired without the landlord fully complying with section 38(1), the tenant would therefore be entitled to double this amount, which would equal \$640.00 plus \$28.75 interest for a total of \$668.75. As the landlord had repaid \$172.49, I find that the outstanding balance was \$496.26.

Analysis: Landlord’s Application

The landlord was claiming the cost of shampooing the carpets, which was a requirement under the tenancy agreement.

An applicant’s right to claim damages from another party is covered under, Section 7 of the Act which states that if a landlord or tenant does not comply with this Act, the regulations or their 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 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 took reasonable measures to mitigate the damage or losses that were incurred.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. While a tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear. 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 although there were gaps and irregularities in the move-in and move-out inspection reports signed by both parties, there was no support to conclude that the rental unit was not reasonably clean both at the start and the end of the tenancy.

I find that, in this instance there was a term in the tenancy agreement that the tenant leave the carpets shampooed as they were prior to taking occupancy. I find that the tenant did not shampoo the carpets, and although the tenant took issue with the amount of the charges, the landlord had submitted an invoice to support the actual cost. I find that the age of the carpeting was not a relevant factor in regards to the tenant's obligation under the agreement to leave the carpets freshly shampooed.

Accordingly I find that the landlord is entitled to be paid for the cost of the carpet cleaning in the amount of \$126.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation of \$496.26 and the landlord is entitled to total monetary compensation of \$126.00.

Pursuant to my authority under section 72 of the Act, I order that the security deposit refund of \$496.26 to which the tenant is entitled, be reduced by the \$126.00 compensation for damages and loss owed to the landlord. Accordingly I hereby issue a monetary order in favour of the tenant for the remainder of \$370.26. 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.

April 2010

Date of Decision

Dispute Resolution Officer