



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	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 convened 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.

Despite being served by registered mail, the tenant did not appear.

### Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$2,400.00.

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 and to retain the security deposit. This determination depends upon answers to the following questions:
- Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?

- 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:
  - a) that the damage was caused by the tenant and
  - b) a verification of the actual costs to repair the damage
  - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The landlord testified the tenancy at the dispute address began in mid-September 2008 for \$1,600.00 per month and at which time a security deposit of \$800.00 was paid. The landlord testified that the tenant had rented the property to run a home for teens. The landlord testified that the tenant gave notice to move effective the end of November and the tenant had shown the unit to prospective renters, but because of the state of the home, nobody was interested in taking the place. The landlord submitted a copy of letter from a prospective tenant stating that when they viewed the unit in November, 2009, it appeared that there was too much damage for the unit to be ready to rent on December 1, 2009 and as a result they decided not to rent the unit.

In addition, according to the landlord, the tenant had over-held by staying in the unit until December 3, 2009 without paying any rent for December. The landlord was seeking loss of rent for December in the amount of \$1,600.00.

The landlord testified that the tenant left a substantial amount of damage that had to be repaired and had replaced the landlord's dryer with one that was not completely functional. The landlord included photos of the unit in support of the claimed damage, which included claims of: \$200.00 for the "corner wall," \$25.00 for the kitchen, \$100.00 for the blind , \$300.00 for the dryer and \$50.00 for the closet and stair. No invoices were

included. The landlord did not submit a copy of any move-in and move out inspection reports nor a copy of the tenancy agreement.

### **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 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 authority to determine the amount and order payment in such 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.

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 tenant. 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 mitigate the damage or losses that were incurred.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must pay for or repair damage to the rental unit 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 or for damage that was not caused by the tenant. This responsibility falls to the landlord under the Act.

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 other 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 efforts.

The landlord made an allegation that the rental unit was not left clean and undamaged. However, I find that the landlord's evidence which consisted of an itemized list of expenditures and photos is not adequate to establish the genuine costs in that it is unsupported by any estimates, receipts or invoices and therefore fails to sufficiently meet element 3 in the test for damage and loss.

Even if I accepted the existence of the damage, I find that the tenant's role in causing damages can best be established with a comparison of the unit's condition before the tenancy began with the condition of the unit after the tenancy ended. In other words,

through the submission of move-in and move-out condition inspection reports containing both party's signatures confirming the state of the rental unit.

Both section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

The Act even offers provisions that anticipate situations where the tenant refuses to cooperate. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When giving each other an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if: (a) the landlord has complied with subsection (3), and (b) the tenant does not participate on either occasion.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was ever completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish exactly what damages were caused by the tenant and that these damages did not pre-exist.

Given the above, even if I accepted the existence of the damage and all of the associated costs spent to rectify the damage, I find that the landlord did not offer sufficient evidentiary proof that the tenant was responsible. Therefore I find that element 2 of the test for damages has not been sufficiently satisfied . Accordingly, I find that the landlord's application must be dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that under the Act, the landlord is not entitled to any monetary compensation from the tenant I find that, under the Act, the landlord is not entitled to retain the security deposit held on behalf of the tenant and that the security deposit should be administered forthwith according to section 38 of the Act. I have granted a monetary order for \$804.00 to the tenant. This order must be served on the landlord and can be enforced through small claims court if necessary.

The landlord's application is hereby dismissed without leave to reapply.

May 2010

Date of Decision

---

Dispute Resolution Officer