



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>	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 repairs, cleaning and money owed or compensation for damage or loss under the Act.

The landlord and one of the two co-tenants named as respondent appeared and each party gave testimony in turn.

Preliminary Matter

The landlord proved service to one of the co-tenants, who appeared at the hearing. However, the landlord was not able to verify that the second respondent was ever served.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord applied for a Monetary Order which requires that the applicant serve each respondent tenant as set out under Section 89(1). In this case I find that only the one co-tenant, (TT) had been served with the Notice of Direct Request Proceeding documents. Although tenants are jointly and severally responsible for the payment of rent or damages under the Act or tenancy agreement, the proceedings can only go forward in respect to those properly served. Therefore, I find that the request for a Monetary Order against both of the tenants must be amended to include only the tenant who had been properly served with the Notice of Hearing. As the service of the Notice

of Hearing documents on the other tenant, (LF), had not been proven as required by Section 89(1) of the Act, the landlord's monetary claim against the tenant not served is dismissed without leave to reapply and the claim will therefore only proceed against TT.

Issue(s) to be Decided

The landlord was seeking a monetary order for compensation for cleaning and repairs to the rental unit.

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.

Background

The landlord testified that a tenancy originally began with other co-tenants in 2007. However, after some of the room-mates had moved out and different ones had then moved in, a new tenancy agreement was signed on January 1, 2009. A copy of the tenancy agreement was submitted into evidence. The rent was \$2,000.00 per month and a \$1,000.00 security deposit had been paid on May 14, 2007. According to the landlord, in January 2009 a move-in condition inspection was completed and in November 2009 a move-out inspection also occurred with the respondent tenant at the end of the tenancy. The landlord submitted a copy of a "*Report of Rental Premises and Contents*", dated June 15, 2007 that featured checkmarks beside items listed indicating whether they were dirty or damaged.. The landlord testified that during the walk-through at the end of the tenancy, some damage was found and this was acknowledged by the tenant. The landlord testified that, however, additional condition issues were discovered later on after a closer inspection when it was daylight. The landlord testified that other co-tenants who had moved out could not be reached. In subsequent discussions with the respondent tenant about the deposit refund and costs, the tenant disagreed with the amounts being charged for the cleaning and repairs. The landlord testified that, after deducting the expenditures to restore the unit, only \$381.48 was returned to the tenant and the landlord kept the remainder of \$618.52 and the interest. Within 15 days, the landlord made an application for dispute resolution for an order to retain these

amounts to pay for the cleaning and damage left. The landlord's total claim was \$641.86.

The parties testified that they were both in agreement with the following claims amounting to costs of \$147.78:

- \$56.97 plus \$6.84 tax for the purchase of a replacement door
- \$29.97 plus \$3.60 tax for the cost of new blinds
- \$ 50.40 for the cost of the lost garage door opener

The landlord was also claiming clean-up costs of \$15.00 based on a charge of \$30.00 per hour, to restore an exterior area where cigarette butts and other refuse were left and an additional \$15.00 to tidy up behind the dryer in the laundry room. The landlord testified that these condition issues were not discovered until after the move-out inspection. The landlord furnished photographic evidence showing the two areas.

The tenant disputed the costs for this additional clean-up and stated that, had the landlord's concerns been communicated at the appropriate time during the move-out inspection, the tenant would have had the opportunity to do the clean-up himself. The tenant took the position that these were minor tasks that would only have entailed a few minutes. The tenant stated that the rental property was left in a reasonably clean condition as required by the Act.

The landlord stated that labour costs for repairs totaling \$340.00 were incurred and supported this claim with an invoice from a licensed handyman showing 8.5 hours at \$40.00 per hour. The invoice indicated that repairs included:

- Door replaced and painted
- Blinds replaced
- Wall fixed
- Light bulbs replaced
- Disposal

The landlord testified that the door required refitting into the existing frame, repainting and disposal of the damaged door. The landlord testified that the wall had been punctured beside an electrical outlet, necessitating patching and painting and the

electric baseboard heater had to be fixed. In addition, several light bulbs had to be replaced. The landlord supplied photos and a store receipt for materials.

The tenant agreed that most of the repairs were required due to damage caused, with the exception of the hole in the drywall around the electrical outlet, which the tenant attributed to a possible deficiency in the wall structure. The tenant also disagreed with the \$40.00 hourly rate being charged by the contractor, particularly in regards to some of the unskilled tasks such as changing the light bulbs, picking up materials and re-attaching the baseboard heat panel. The tenant pointed out that the contractor's invoice was not sufficiently detailed to justify the 8.5 hours of work as there was no breakdown by task and one of the repairs was not even mentioned. The tenant estimated that the expected labour costs for the repairs described should be less than \$150.00 including the landlord's touch-up cleaning.

The landlord gave detailed testimony about other expenses claimed including paint for the door costing \$16.97 plus tax, light bulbs totaling \$23.93 plus tax and a "bi-metal kit" costing \$24.95 plus tax.

The tenant disputed the costs for light bulbs and asked for an explanation regarding the need for the "bi-metal" kit, which the landlord believed had something to do with installation of the door.

Analysis: Monetary Claims

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 party 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.

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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and finally that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item some guidance is provided in regards to the normal useful life expectancy of particular items in Residential Tenancy Policy Guideline 37.

The average useful life set for blinds is 10 years, for doors is 20 years and for paint is 4 years.

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 provide and 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. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of

a rental unit must repair damage to the rental unit or common areas 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(2) 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, and give the landlord all the keys or other means of access.

In regards to the move-in and move-out inspection reports, I find that both section 23(3) for move-in condition inspections and section 35 for the move-out condition inspections state that the landlord must arrange the inspection and after it is conducted and both the landlord and tenant must sign the condition inspection report. The landlord must then provide the tenant with a copy of that report in accordance with the regulations. I find the practice followed by this landlord in regards to the start-of-tenancy and the end-of-tenancy condition inspection did not fully comply with the Act.

However, as the tenant did acknowledge the existence of most of the damage being claimed consenting to some of the charges, I find that the landlord is entitled to \$147.78 for the agreed-upon purchase of the door, blinds and garage door opener.

In regards to the landlord's claim for costs of labour to replace the door and repair other damage, while I do accept that the repairs were required, I find that the invoice was not sufficiently detailed to justify the charges being claimed. I also find that some of the deficiencies were not brought up during the final walk through. Given the evidence and testimony, I find the landlord is entitled to \$150.00 for labour for repairs and clean-up.

I find that the landlord is also entitled to partial reimbursement for the purchase of paint and light bulbs in the amount of \$20.00. I dismiss the landlord's claim for the cost of the "bi-metal kit" as this item has not sufficiently met the test for damages.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of \$342.78 comprised of \$167.00 for the purchase of supplies, \$150.00 for labour and \$25.00 reimbursement for half the cost of the application.

The landlord had already returned \$381.48 of the tenant's \$1,015.71 deposit and interest, leaving \$634.23 still held by the landlord. I order that the landlord is entitled to

retain \$342.78 from the portion of the deposit still held, in full satisfaction of this claim and I order the landlord to return the remainder of \$291.45 to the tenant.

Conclusion

I hereby grant a monetary order to the tenant ordering the landlord to repay \$291.45 to the tenant. This order must be served on the landlord and if unpaid, may be enforced through Small Claims Court .

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

May 2010

Date of Decision

Dispute Resolution Officer