



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<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 \$800.00 security deposit under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$878.85 for the cost of damage to the suite. The landlord was also seeking 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 based on the tenant proving that a security deposit was paid and a written forwarding address given to the landlord.
- Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and the provision of the forwarding address?

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for 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. 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.
 - the costs occurred due to a violation of the Act or Agreement
 - proof of the amount or value being claimed.
 - A reasonable effort has been made to minimize the damages?

Burden of Proof: 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

The tenancy began on August 1, 2008 with rent of \$1,600.00 and security deposit of \$800.00. The tenancy ended on February 25, 2010.

The tenant testified that attempts to discuss the move-out inspection were repeatedly delayed by the landlord but the tenant had asked the landlord to let her know if anything in the unit needed to be addressed. By March 8, 2010 the tenant had not heard anything so contacted the landlord and was informed that "*a few things needed to be fixed*". The tenant went to the landlord's office, got the move-out condition inspection report that had been completed by the landlord in her absence, then went to the unit and cleaned and fixed all of the noted deficiencies that day. The tenant was advised that the new tenant was moving in on March 11, 2010 and the tenant's deposit would be

returned by March 15, 2010. However, when the tenant contacted the landlord on March 15, 2010, she was told that the landlord had discovered that the internal blinds within the glass of the living room door were not working. The tenant testified that the landlord stated they would have a repair company look at the blinds and would contact her as to the cost. The tenant testified that she protested that the blinds were always a bit fidgety but were still functional when she moved out. The tenant stated that she phoned the landlord repeatedly over the next two weeks about the status of her security deposit refund but the landlord never called her back. The tenant sent the landlord a written forwarding address on April 1, 2010 requesting the return of her deposit. The tenant's position was that she was not responsible for the malfunction of the blinds and it was not noted on the move-out condition inspection report she signed. The tenant had submitted a copy of the Move-Out Condition Inspection Report into evidence. The tenant was seeking the full return of the security deposit.

The landlord testified that the problem with the internal blinds had not been noticed when the landlord inspected the suite after the tenant moved out and thus was not included on the move-out inspection report presented to the tenant. However, this damage was later discovered and the repairs cost \$878.85 for which the landlord was seeking compensation pursuant to the invoice for this amount in evidence. The landlord stated that the blinds were inside of the glass panes of the doors and the doors were approximately 5 years old. When asked what the tenant had done to damage the blinds, the landlord speculated that it may have occurred through "over-use". The landlord made application on April 13, 2010 seeking to keep the tenant's security deposit and a monetary order for the remainder based on the cost of the repair .

Analysis: Tenant's Application

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 \$800.00 security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that the forwarding address was given to the landlord on April 1, 2010, and the landlord made an application for dispute resolution within the following 15 days.

Analysis: Landlord's Application

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. and 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.

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. 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 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 the compensation claimed by the landlord is \$878.85 and related to malfunction of door-blinds located between two panes of glass within the door in question and, other than the control lever, the blinds were part of the inside of the door.

Under the Residential Tenancy Regulations, a landlord is responsible for the maintenance and repairs of fixtures. A fixture is defined as a “thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land. I find that the door would be considered to be a fixture, including its internal workings. I find that the tenant did not have any direct access to the mechanical parts of this fixture and it had evidently failed due to normal use, rather than damage negligently or purposely inflicted by the tenant. In any case, the Move-Out Condition Inspection was conducted in the absence of the tenant, contrary to the Act and Regulations and made no mention of the alleged damage. Given the above, I find that the maintenance and repairs of the fixture would fall to the landlord. 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 the tenant is entitled to the return of the security deposit in the amount of \$855.02 comprised the deposit of \$800.00, interest of \$5.02 and the \$50.00 paid for the application and hereby issue a monetary order for this amount. 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.

Based on the testimony and evidence presented during these proceedings I hereby dismiss the landlord's application in its entirety without leave to reapply.

August 2010

Date of Decision

Dispute Resolution Officer