

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary award for damage and loss caused by the tenants during the tenancy. The landlord also applied for recovery of her filing fee for her application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing, were given a full opportunity to be heard, to present evidence and to make submissions. The parties dispute resolution and her revised application for dispute resolution by registered mail. The tenants confirmed that they had received and reviewed the landlord's applications and her evidence package. I am satisfied that the landlord's application for dispute resolution was served to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage caused by the tenants during the tenancy? Is the landlord entitled to recover her filing fee for this application?

Background and Evidence

The landlord testified that the original lease commenced on April 1, 2008 to one of the tenants and another tenant who has since left the tenancy. She said that the most recent lease to the tenants commenced on April 1, 2009 for a one-year term. Rent was set at \$2,250.00, payable on the first of each month. By agreement, the tenants vacated the rental premises on March 31, 2010. The landlord testified that she continued to hold the \$1,050.00 security deposit plus interest paid on April 1, 2008.

She testified that one of the original tenants participated and signed the original move-in condition inspection report on April 30, 2008. She testified that the tenants participated in the move-out inspection on April 1, 2010 and April 2, 2010. She said that this process took two days because the tenants had not completed their move and the inspection took longer than planned because of the condition of the rental premises.

Tenant GB (the tenant) testified that neither tenant signed the move-out condition inspection report and that they were not provided with a copy of that report until the landlord submitted her application for dispute resolution. The tenants disagreed with the landlord's move-out condition inspection report, maintaining that items were added by the landlord after the tenants completed their joint inspection with the landlord.

The landlord originally applied for a monetary award of \$1,275.00, based on her estimates of what it would cost to repair and clean the rental premises. The landlord amended her application to \$1,562.32, based on receipts she obtained for work on the rental premises. These receipts included a receipt for \$977.32 for material and labour for repairs due to the tenants' damage to the rental premises, one for 5 hours of cleaning at \$95.00 hour for a total of \$375.00, and another for \$210.50 for carpet cleaning. In addition to the items noted in the condition inspection report, the landlord presented a lengthy list of items that required repair after the tenants vacated the premises. The landlord also submitted into evidence photographs of the rental premises which she maintained were taken shortly after the tenants moved out.

The tenants accepted that some of the items cited by the landlord were damaged during the tenancy. However, they maintained that they spent considerable time cleaning the rental premises, including the rental of a carpet cleaner. They provided no receipts regarding this rental. They also asserted that many of the items claimed by the landlord were either in that condition at the commencement of the lease or resulted from lack of maintenance or poor quality materials.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the landlord, must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied by the landlord's photographic evidence, the receipts she submitted and the testimony of the landlord and the tenants that the landlord has incurred monetary losses arising out of damage caused by the tenants. However, the tenants have questioned the extent to which some of this damage had already occurred when the lease commenced. They have also questioned the accuracy of the move-out condition inspection report submitted by the landlord.

To avoid disputes regarding the condition of rental premises before and after a tenancy, the *Act* sets out procedures for conducting joint move-in and move-out condition inspections. Although the parties agreed that joint inspections were conducted, they disagreed as to the reason why the tenants did not sign the move-out condition inspection report. The tenants also maintained that the landlord added items to the move-out condition inspection report following their joint inspection and noted that the landlord is supposed to send the tenants a copy of the completed report. While the landlord does not seem to have followed all of the procedures regarding the preparation of the move-out condition inspection report, that report does provide some evidence that the rental premises were not in the same condition as when the tenancy commenced. The evidence indicates that the tenants were responsible for many of the required repairs to the rental premises. However, as the tenants raised valid concerns about some of the items included in the landlord's request for a monetary award, I have not

allowed the landlord the full amount of her amended application for a monetary order. I grant the landlord a monetary award as set out below.

Item	Amount
Repairs ($\$977.32 - \$100.00 = \$877.32$)	\$877.32
Cleaning ($\$375.00 \times \frac{1}{2} = \187.50)	187.50
Carpet Cleaning ($\$210.00 \times \frac{1}{2} = \105.00)	105.00
Less Security Deposit Plus Interest ($\$1,050.00 + \$11.83 = 1,061.83$)	-1,061.83
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$157.99

The tenants observed that the original move-in condition inspection report identified a number of marks, holes and painting problems in the rental premises that may be included in the landlord's request for a monetary award. They also noted that they may not have been responsible for damage to some of the items in the landlord's list (e.g., portions of the deck). I issue a monetary award for recovery of the landlord's repairs of the rental premises in the amount of \$877.32. I have deducted \$100.00 from the landlord's \$977.32 receipt to take into account some items which may have been damaged prior to the commencement of the tenancy and other items where the tenants may not have been solely responsible for the damage.

Although the landlord submitted many photographs of the rental premises, her only photographs of the general state of cleanliness of the rental premises were limited to photographs of the oven and the microwave. The tenant also gave sworn testimony that he undertook extensive cleaning before he vacated the premises. In the monetary award, I allow the landlord half of her \$375.00 request for recovery of her cleaning expenses (i.e. \$187.50).

The landlord asked for reimbursement of her carpet cleaning costs, but only provided a photograph of burn marks in the carpet as evidence. The tenants also noted that the landlord may have had to clean carpets after her contractor completed renovations that

the landlord decided to undertake to the rental premises. In the monetary award, I allow half of the landlord's \$210.00 carpet cleaning cost (i.e., \$105.00).

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit for this tenancy plus interest from April 1, 2008 in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee she paid for this application.

Conclusion

I grant a monetary order in the landlord's favour for damage caused during this tenancy as set out in this decision. I allow the landlord to recover her filing fee for this application from the tenant. I allow the landlord to retain the tenants' security deposit in partial satisfaction of this monetary order.

The landlord is provided with Orders in the above terms and the tenants must be served with a copy of these Orders as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.