



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MNDC, MND, MNSD, FF

### **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 appeared and despite being served by registered mail sent on September 23, 2010 the tenant did not appear.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages.

### **Background**

The landlord testified that a tenancy began on July 1, 2009. A copy of the tenancy agreement was submitted into evidence. The rent was \$1,500.00 per month and a \$750.00 security deposit had been paid. A move-in condition inspection was completed by both parties at the time the tenant moved in and a copy was in evidence.

The landlord testified that at the end of the tenancy a move-out condition inspection was scheduled by the tenant for March 30, 2010. However, when the landlord arrived, the tenant was not ready to participate in the inspection. The landlord testified that she told the tenant that the move-out inspection would therefore be done on April 5, 2010 and the tenant did not propose any alternate time. The inspection occurred in the tenant's absence and the landlord filled out the form. The landlord found that the unit was not clean, items were left by the tenant and there was substantial damage. The landlord seeks to retain the security deposit and interest to pay for the cleaning, damage and loss with a monetary order issued for the remainder.

The landlord was claiming the following:

\$50.00 for disposal of items

\$11.00 for 8 batteries for the door lock, and remote controls for TV and VCR

\$15.00 for burned-out light bulbs

\$30.00 to replace stained bathroom mats

\$128.40 to clean the unit

\$45.00 estimate to repair window closer

\$304.50 for carpet cleaning

\$10.00 for hood fan filter

\$300.00 for damaged chair

\$500.00 to reimburse for deductible amount of 2009 insurance claim

\$50.00 for the filing fee for this hearing

The total amount being claimed was \$1,393.90

No receipts nor invoices were in evidence except for the deductible amount charged for the insurance claim. However, the landlord gave verbal testimony about the damage and provided some photographs of damaged furnishings. The landlord also stated that there was other damage to the suite including a damaged chest, garbage disposal and broken faucet that had not been claimed.

The landlord testified that three separate trips were required to dispose of the items left by the tenant and the carpet cleaning costs were higher due to the fact that wax removal was necessary. In regard to the damage to the chair, the landlord stated that it was evident that the damage on both arms was done by a cat despite the rule that cats were not allowed under the tenancy agreement. According to the landlord the chair was five years old but was damaged beyond repair and had to be replaced by another chair that the owner already had on hand. The landlord testified that the claim for reimbursement of the \$500.00 deductible insurance charges was based on the fact that the tenant had misused the washing machine by over-stuffing it causing a leak that damaged another suite. The deduction statement from the company and a copy of a cheque stub was in evidence to verify that the landlord paid \$500.00 towards the damage.

### **Analysis:**

In regard to the move-out 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. I find that

under section 35 of the Act, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection and Part 3 of the Residential Tenancy Regulation goes into significant detail about how and when the End-of-Tenancy Condition Inspection must be conducted. I find that the landlord had complied with the Act by offering the tenant two opportunities to do the inspection.

In regard 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.

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 to verify the actual monetary amount of the loss or damage and finally must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regard to the cleaning and repairs, I find that section 32 of the Act requires that 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 also 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.

Although the landlord did not provide invoices to confirm the expenditures, I find that the tenant did not comply with section 37 of the Act and this violation resulted in a loss.

Accordingly I find that the landlord is entitled to \$200.00 for cleaning the unit and removing the debris. I also find that the tenant must reimburse the landlord the \$500.00 deductible paid by the landlord for the insurance claim relating to damage caused by the tenant's actions in over-loading the washer. I find that the landlord is entitled to be reimbursed the \$50.00 for the filing fee for this hearing. The landlord is entitled to total monetary compensation of \$750.00

### **Conclusion**

I hereby order that the landlord is entitled to retain the tenant's security deposit of \$750.00 from in full satisfaction of this claim.

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

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*.

Dated: January 2011.

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Residential Tenancy Branch