

## **DECISION**

**Dispute Codes:** MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs, cleaning, garbage removal and loss of rent and to keep the security deposit in partial satisfaction of the claim.

The landlord appeared. Despite being served by registered mail, sent to the addresses given verbally by the tenant to the landlord, 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 the tenancy began on June 26, 2006 and rent was \$1,325.00. A security deposit of \$612.50 was paid. The tenancy ended on June 30, 2010. A copy of the tenancy agreement was in evidence. Also in evidence were photos of the unit, a written statement from the landlord, witness statements, copies of invoices and receipts and proof of service. No move-in and move-out condition inspection report was in evidence.

The landlord testified that, at the time the tenant left, no rental arrears were owed. However, according to the landlord, the unit was left in a state that required substantial repairs and after unsuccessful efforts to resolve the matter with the tenant, the landlord made an application for dispute resolution.

The landlord is seeking

- \$1,326.64 for installing laminate flooring to replace ruined carpet
- \$585.45 cost of materials for the laminate flooring
- \$135.52 for carpet-cleaning of upstairs bedrooms and stairway
- \$119.75 materials plus \$100.00 installation to replace kitchen linoleum
- \$196.00 and \$80.00 to replace damaged screens

- \$15.88 to purchase disinfectant spray
- \$243.60 paid for yard cleanup and dump charges
- \$1,184.67 labour costs for painting
- \$637.13 cost of paint supplies
- \$297.44 for replacement blinds
- \$1,325.00 for loss of rent for July 2010 due to delay caused by repairs
- \$100.00 cost of filing the application

The landlord testified that, although no move-in condition inspection report was completed, a walk through was conducted at the start of the tenancy and the landlord pointed out that the tenancy agreement signed by the parties contained an acknowledgement that the unit was "*clean and in good repair*". The landlord testified that the tenant repeatedly verbally declined to participate in a move-out inspection.

The landlord testified that the unit had a foul odour because the carpets and walls had been contaminated with cat urine. The landlord stated that the carpets were only 5 years old and pets were specifically forbidden under the tenancy agreement. According to the landlord, no attempt was made to clean the carpets on the main floor, after the tenant had vacated, because a flooring expert had advised that the damaged and contaminated carpeting would need to be completely replaced. The landlord submitted written confirmation from the carpet expert. The landlord stated that the cost of the damage was mitigated by replacing the carpet with lower-priced laminate at less cost than a new carpet would be. The landlord stated that the remainder of the carpet in the unit was professionally cleaned and submitted a copy of the invoice. The landlord also submitted a copy of an invoice for disinfectant spray he had purchased to help eliminate the cat odour.

The landlord stated that the kitchen linoleum, which was only one year old, was permanently stained and had to be replaced. The landlord had submitted photos of the damage and an invoice for the \$119.75 cost of materials.

The landlord stated that all of the screens, including screens for the two patio doors, had to be replaced at a total cost of \$276.00. The landlord referenced photos that showed rips in some of the screens.

The landlord stated that the yard was left in a bad state and supplied photos showing overgrown grass and refuse. No copy of the invoice was submitted into evidence.

The landlord testified that the unit needed to be repainted due to the smell and other damage and the combined cost of materials and labour totaled \$1,821.80. Evidence included copies of the invoices and photos. The landlord stated that the cost of painting

was increased by 50% more than it would otherwise have been because of the need for specialized paint to eradicate the cat urine odour.

The landlord testified that 13 blinds were destroyed by the tenant and provided a receipt for the purchase of these and photos of five of the damaged blinds.

The landlord is also seeking loss of rent for the month of July due to the fact that the offensive odour and repairs in progress delayed re-rental of the unit until August 1, 2010.

### **Analysis:**

With respect 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 was on 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.

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

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report was completed.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

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 take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be.

Given the above I find that the landlord is entitled to \$956 for the replacement laminate flooring, \$135.52 for carpet-cleaning, \$60.00 to replace kitchen linoleum, \$138.00 to replace screens, \$15.88 to purchase disinfectant spray, \$60.00 for replacement blinds and the \$100.00 cost of this application.

The landlord's claims for \$100.00 labour to install the linoleum and the \$243.60 for yard cleanup did not meet element 3 of the test for damages and I find these charges must be dismissed. With regard to the painting, I find that the average useful life for interior paint finishes under the Regulation is set at 4 years. A tenant is not responsible to compensate for normal wear and tear and thus the pro-rated replacement value of five-year-old paint would be nil.

I find that the landlord's claim for \$1,325.00 for loss of rent for July 2010 failed to satisfy element 4 of the test for damages. Delays caused by the repainting of the unit would

not be a liability of the tenant and I find that a significant number of the other repairs were not initiated by the landlord until well into the month of July 2010.

Given the above, I find that the landlord is entitled to monetary compensation of \$1,466.00 comprised of \$956.00 for the replacement laminate flooring, \$136.00 for carpet-cleaning, \$60.00 to replace kitchen linoleum, \$138.00 to replace screens, \$16.00 to purchase disinfectant spray, \$60.00 for replacement blinds and the \$100.00 cost of this application.

### **Conclusion**

I order that the landlord retain the tenant's security deposit of \$612.50 as partial payment towards the money owed, leaving a balance of \$853.50 and hereby issue a monetary order for this amount. This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims 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*.

Dated: March 2011.

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Residential Tenancy Branch