



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

The tenant did not attend this hearing, although I waited until 1:46 p.m. in order to enable her to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she served the tenant with a copy of her dispute resolution hearing package by sending her this information by registered mail on December 9, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

### Background and Evidence

The landlord testified that the tenant commenced living in this rental unit approximately three to six months before she signed a month-to-month tenancy agreement for her tenancy commencing on July 1, 2010. According to the terms of an Addendum to the Residential Tenancy Agreement signed by both parties, there was to be no smoking in the rental unit. Monthly rent was set at \$650.00, payable on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit paid on July 1, 2010. The tenant vacated the rental unit by November 20, 2010.

The landlord testified that she did not request or conduct a joint move-in condition inspection because the initial intention was to rent the premises to the tenant for a few months while the property was being sold. When plans changed and the landlord removed the property from the real estate market, no joint condition inspection was conducted as the tenant had already been living in the rental unit for some time. The landlord testified that no joint move-out condition inspection was conducted nor did she

formally request one. She said that the tenant left her forwarding address on a note on the wall. The landlord did not conduct her own condition inspection after the tenant vacated the rental unit.

The landlord applied for an overall monetary award of \$480.00 for damage to the rental unit caused by the tenant's smoking in the rental unit, damage to blinds, damage caused by the tenant's dog to a door seal, and general cleanup required when the tenant left material behind after her tenancy ended. The landlord submitted into written evidence a number of photographs, various invoices and receipts, and a written statement by a realtor who showed the property to prospective purchasers. The landlord testified that she missed two days of work to clean and repair the rental unit after the tenant vacated. She said that she spent more than 18 hours cleaning and repairing the rental unit. In her application for dispute resolution, she asked for reimbursement for these hours at a rate of \$15.00 per hour, for a total of \$270.00.

### 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 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.

The landlord has provided undisputed evidence to support her claim for a monetary award from the tenant. However, she did not conduct or request joint move-in or move-out condition inspections, nor did she prepare her own condition inspection report and send a copy to the tenant in accordance with section 35 of the *Act*. Without this information, it is difficult to determine whether the conditions identified in the landlord's photographs resulted from this tenancy or if this occurred before the tenant occupied this unit. There was also an element of inconsistency between oral evidence provided by the landlord and an undated letter entered into written evidence by her from the realtor regarding the timing of the smoking damage to this rental unit.

I accept the landlord's undisputed evidence that the tenant did not conduct a proper cleaning of the rental premises at the end of her tenancy and that damage resulted from this tenancy. I find that the landlord had to conduct an extensive cleaning of the rental unit and some repairs and replacement of items when the tenant vacated the premises. In addition to her own time, the landlord submitted receipts for expenditures that were

necessary to restore the rental unit to its previous condition. Based on a weighing of the evidence, I allow the landlord a monetary award of \$325.00 to reflect her losses for repairs, replacement of broken items, and cleaning required at the end of this tenancy. I allow the landlord to retain the tenant's security deposit plus interest to satisfy this monetary award. No interest is payable over this period.

Conclusion

I allow a monetary award in the landlord's favour in the amount of \$325.00, which is to be recovered by the landlord by allowing the landlord to retain all of the tenant's security deposit.

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*.