



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF, MNDC

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant said that he received the landlord's dispute resolution hearing package by registered mail on December 15 or 16, 2010. The female landlord (the landlord) confirmed that she received the tenant's dispute resolution hearing package sent by the landlord by registered mail on March 15, 2011. I am satisfied that the parties served one another with these packages and their evidence in accordance with the *Act*.

At the commencement of the hearing, I clarified the spelling of the tenant's name and amended that spelling on the landlord's application as set out above as per the landlord's request.

The landlord also requested permission to amend the amount of her application for a monetary award by adding \$680.00 in unpaid rent for December 2010. The landlord did not submit an amendment of the application for dispute resolution nor did the landlord notify the tenant of the increase in the amount of her requested monetary award. Since I was not satisfied that the landlord had given the tenant adequate notice that the

landlord was seeking a monetary award for losses arising from unpaid rent for December 2010, I denied the landlord's request.

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 all or a part of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the tenant entitled to a monetary award for loss arising out of this tenancy as a result of the landlord's delay in restoring the shower to his rental unit? Are either of the parties entitled to recover the filing fees for their applications from the other tenant?

Background and Evidence - Landlord's Application

This periodic tenancy commenced on March 1, 2003. Rent by the end of this tenancy was \$640.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$250.00 security deposit paid on March 1, 2003, plus interest. The parties agreed that the tenant gave the landlord the October 30, 2010 written notice to end tenancy on November 30, 2010.

The landlord entered into written evidence a copy of the joint move-in condition inspection report signed by the tenant and the previous landlord on April 8, 2003. The landlord's property manager (the property manager) testified that he arranged to conduct a joint move-out condition inspection with the tenant at 1:00 p.m. on November 30, 2010. The property manager said that the tenant was not ready to leave the rental unit when he attended the property at that time and still had to remove his belongings and clean the rental unit. The property manager said that he did not make alternate arrangements to inspect the rental unit and the tenant did not leave the rental unit until 11:00 p.m. that night. The property manager did not conduct his own condition inspection of the premises, complete his own condition inspection report or send a copy of that report to the tenant. Rather, the property manager sent the tenant a December 1, 2010 letter advising the tenant that the suite was not left in a clean condition and as a result the landlord intended to charge the tenant \$300.00 to clean the premises, as per an agreement with the landlord's cleaning contractor.

The tenant denied the property manager's claim that the landlord scheduled a joint move-out condition inspection at 1:00 pm on November 30, 2010. He said that the landlord made no arrangements to inspect the rental unit together and sent him the December 1, 2010 letter the day after he vacated the rental unit.

The parties provided conflicting photographic, oral and written evidence regarding the condition of the rental unit when the tenant vacated the rental unit. The landlord, the

property manager and the landlord's site manager testified that the rental unit was not properly cleaned by the tenant and referred to some of the photographic evidence to support the landlord's claim. The tenant testified that he cleaned the rental unit to the best of his ability, but the rental unit was old and had not been renovated. He said that carpets were not replaced during the eight years he lived there and that marks beside the stove were there when he moved into this rental unit.

The landlord requested a monetary award in the amount of \$300.00 for the cleaning that was required to this rental unit after the tenant vacated the premises. The landlord also requested recovery of the filing fee and authorization to retain the tenant's security deposit in partial satisfaction of the monetary award.

#### Background and Evidence – Tenant's Application

The tenant applied for the loss that he claimed resulted from the landlord's failure to repair his shower after the ceiling above his bathtub collapsed in a September 6, 2010 incident. He testified that he was without a functioning shower from that date until November 22 or 23, 2010. He said that for most of this period the broken ceiling was sitting in his bathtub awaiting a series of inspections by staff from the landlord's insurance company. He entered into written evidence photographs of the hole above his shower area and the dislodged ceiling sitting in his bathtub. He said that he asked the landlord frequently about repairing the ceiling above the shower but that the repairs did not get completed until after he sent a November 22, 2010 letter to the landlord.

The tenant's application for a monetary award of \$490.00 was his estimated cost of showering at the nearest community recreation centre for this 2 ½ month period. He provided receipts to demonstrate that he incurred the cost of a \$46.00 monthly pass at the recreation centre for the period from September 7, 2010 until October 7, 2010. When the repairs were not completed by October 7, he purchased a one year recreational pass for \$377.00 that allowed him to use the recreation centre facilities where he could use the shower. He asked for reimbursement for the pro-rated cost of this pass purchased on October 11, 2010 until the repairs were completed by November 23, 2010. In addition, the tenant requested a monetary award for the time that he spent travelling to and from the recreation centre to access their shower, the remainder of his application for the monetary award.

The landlord disputed the tenant's claim that he needed to shower at the recreation centre. She and the property manager testified that had the tenant advised them that he needed access to a shower, they could have made one available to him in another rental unit on the property which was vacant over that time period. They also provided oral and written evidence that the tenant told them that he was showering at a nearby

friend's and that his temporary loss of the shower was not a problem for him. They testified that the shower was operational after October 7, 2010 and entered written evidence regarding shower repairs by their plumber. They said that the ceiling above the tenant's bathtub was not repaired until the end of October 2010, although they had no receipt from the carpenter who completed this work. They maintained that the tenant's claim for loss of the shower was actually a request for reimbursement for the tenant's use of the gymnasium and recreation facilities.

### Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

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.

### Analysis – Landlord's Application

Section 37(1) of the *Act* requires a tenant to vacate a rental unit by 1 p.m. on the day the tenancy ends unless there is prior agreement between the parties to the contrary. In this case, the tenant did not vacate the rental unit until 11 p.m. on November 30.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant maintained that some of the items in the landlord's claim were left in the same condition as when he moved into the rental in 2003.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of April 8, 2003 entered into evidence by the landlord showed that all parts of the rental unit were in fair condition at that time. However, no joint move-out condition inspection was conducted, no report was issued

by the landlord, and conflicting evidence was provided by the parties to explain why this did not occur.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Although I find that the landlord did not provide two opportunities for inspection of the rental premises, the tenant did not end this tenancy by 1:00 p.m. on November 30, 2010 as he was required to under the *Act*. The landlord issued a letter the following day to claim \$300.00 for cleaning the rental unit, rather than make an additional request to conduct the joint move-out inspection. The landlord failed to make an inspection after the tenant vacated the rental unit and provide a copy of that inspection report to the tenant.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, I also find that the tenant also did not comply with section 37(1) of the *Act* by leaving the rental unit very late on November 30, 2010.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section

37(2)(a) of the *Act* to leave the rental unit “reasonably clean” as some cleaning was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$100.00 for general cleaning that was required at the end of this tenancy.

#### Analysis – Tenant's Application

I find on a balance of probabilities that the tenant is entitled to a monetary award for losses arising out of this tenancy because his monthly rent included a payment for the use of the shower in his bathroom that was not available for an extended period of time. Based on the receipts provided by the tenant, I accept that the tenant is entitled to a monetary award of \$46.00 for the period from September 7, 2010 until October 7, 2010.

I have given consideration to the landlord's claim that the landlord could have made shower facilities available to the tenant elsewhere in the rental property had the landlord been notified by the tenant that he was incurring costs to use shower facilities elsewhere. Section 7(2) of the *Act* requires a party to a tenancy agreement to take reasonable actions to mitigate the other party's losses in order to qualify for a monetary award. I find that by October 7, 2010, the tenant realized that this was not a short-term loss of his access to his shower and that he was incurring mounting costs to use the shower at the recreation centre. Although I accept the tenant's evidence that he kept asking the landlord's representatives about the progress to repair his shower and bathroom ceiling, the tenant did not submit evidence that he alerted the landlord that he was planning to bill the landlord for his use of the shower at the recreation centre. I also accept the landlord's evidence supported by receipts that the tenant's shower was operational by October 7, 2010, although I agree that showering without a bathroom ceiling may not have been ideal. By that time, I find that the tenant was under an obligation to give some type of notice to the landlord that he was not satisfied with his existing shower arrangements and that he was incurring costs to obtain a substitute for services that were included in his rent. Had the tenant done so, I accept that the landlord could have allowed the tenant to use the shower in a vacant rental unit in the rental property. For these reasons, I find that the tenant is not entitled to a monetary award for a loss of his shower facilities beyond October 7, 2010.

#### Security Deposit and Filing Fees

The landlord testified that she continues to hold the tenant's \$250.00 security deposit plus interest from March 1, 2003 until the date of this decision. I order the landlord to return the tenant's security deposit plus interest to the tenant forthwith.

As both parties were partially successful in their applications, I find that both parties should bear the filing fees for their applications.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows each party monetary awards and requires the landlord to return the remainder of the tenant's security deposit plus interest to the tenant:

| <b>Item</b>                                                           | <b>Amount</b>     |
|-----------------------------------------------------------------------|-------------------|
| Landlord's Monetary Award for Cleaning                                | \$100.00          |
| Less Tenant's Monetary Award for Loss of Shower until October 7, 2010 | -46.00            |
| Less Security Deposit Plus Interest<br>(\$250.00 + \$8.86 = \$258.86) | -258.86           |
| <b>Total Monetary Order</b>                                           | <b>(\$204.86)</b> |

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.