



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 4, 2011. Mail receipt numbers were provided in the Landlord's evidence along with proof that the Tenant signed for the documents on March 9, 2011.

The Landlord and Agent appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served with notice of today's hearing in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Tenant had occupied the rental unit since May 1, 2008 and entered into a new month to month tenancy agreement that began on July 1, 2009. Rent was payable on the first of each month in the subsidized amount of \$280.00. The tenancy ended October 31, 2009. A move in inspection report was conducted April 29, 2008 and was attended by the Tenant's agent. The move out report was conducted on November 2, 2009 in the absence of the Tenant.

The Landlord confirmed that notice to end tenancy was received from the Tenant on September 30, 2009. When the Tenant vacated the property there was \$70.00 owing for rent for October 2009 and the Tenant had left the rental unit damaged, unclean, and with debris and furniture left inside the unit. The Landlord referred to the photographs that were provided in their evidence, which were taken on November 2, 2009, to support her testimony on the condition of the rental unit.

There were a second set of photos taken after November 16, 2009 when the carpets were cleaned in attempts to remove the stains. She advised these photos were provided to support that the stains could not be removed and the Landlord had to replace the carpets as a result. She stated that they had attempted to mitigate the loss by having the carpets cleaned because they were only two years old. She referred to the move-in inspection report which supports the carpets were new at the onset of the tenancy.

The Landlord is seeking a monetary order in the amount of \$3,180.08 which is comprised of the following:

- \$70.00 for unpaid from October 2009
- \$280.00 for cleaning the rental unit which is 14 hours @ \$20.00 per hour. The actual cleaning time was 20 hours however the Landlord has chosen to reduce the claim.
- \$189.00 to have the carpets cleaned. As stated above these carpets were only two years. The Landlord stated they were attempting to mitigate their loss and limit the charges to the Tenant however the stains were so severe they could not be removed.
- \$2,516.08 to have the carpets replaced. The actual cost was \$3,145.12 and the claim was reduced by the depreciated value of the carpet. She based the useful life of carpet as ten years and as the existing carpet was only two years old they are only requesting reimbursement of 80% of the total cost.
- \$60.00 for the man and truck to attend the rental unit to complete repairs on walls, doors, kitchen cabinet and a bi-fold door. The work was performed on November 17, 2009 for two hours at \$30.00 per hour. The hourly rate is based on the employee's wages, benefits, and vehicle and equipment costs.
- \$65.00 which is a charge of one hour to have a man and truck attend the rental unit to remove furniture and debris that was left behind by the Tenant. Landfill charges were incurred but not charged back to the Tenant.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which consisted of, among other things, copies of the tenancy agreement; move in and move out inspection reports; photographs; and invoices for repairs and work completed on the rental unit at the end of the tenancy.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32 (2) of the Act provides 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; and Section 32 (3) of the Act states 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.

Section 37 (2) of the Act states when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In this case the evidence supports that at the end of the tenancy the Tenant left the rental unit damaged, unclean, and with debris that had to be removed, which is in breach of sections 32 and 37 of the Act. As a result of the Tenant's breach the Landlord suffered a loss of \$3,180.08. I accept the Landlord's testimony that they did what was

reasonable to attempt to mitigate their losses and lessen the charges to the Tenant by first attempting to have the carpets cleaned. When the carpet cleaning was unsuccessful they had no choice but to have the carpets replaced. Both actions are a direct result of the Tenant's breach.

Based on the aforementioned I find the Landlord has met the burden of proof for damage or loss, as listed above, and I hereby approve their claim in the amount of **\$3,180.08**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

#### Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$3,230.08** (\$3,180.08 + 50.00).

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: June 14, 2011.

---

Residential Tenancy Branch