



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for cleaning, repairs and replacement of damaged items. The landlord appeared but despite being served by registered mail to the service address provided in writing by the tenant, neither of the two co-tenants appeared.

### **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*.

### **Background**

The landlord testified that the tenancy began on August 1, 2010 and rent was \$1,450.00. The tenancy ended on January 13, 2011 and the security deposit was returned to the tenant in full. No move-in and move-out condition inspection reports or copy of the tenancy agreement were in evidence.

The landlord testified that at the time the tenant arrived, the unit was clean and the bedding was in pristine condition. The landlord submitted a written statement from the previous tenant and the acting property manager verifying that the unit was clean and all of the bed linens were also without flaw.

According to the landlord, although the unit was clean and in good repair at the start of the tenancy, at the end of the tenancy the carpets were left in a dirty, unkempt condition and much of the bedding included with the suite was ruined. With respect to the carpeting, the landlord submitted photos that showed stains in several rooms. The landlord included an estimate of \$216.50 plus HST for the cost of cleaning, but stated that she did the cleaning herself, spending approximately 2 days. The landlord testified that the linens were recently purchased, a few months prior to the tenancy and included a receipt for the cost of new bedding in the amount of \$126.56, which is being claimed. With respect to the damaged mattress, the landlord stated that it was only a few months old, but that she did not have the original receipt as the item was a gift. The landlord testified that she tried, without success, to clean the mattress spending \$19.60, and also

obtained a written estimate for the replacement value of \$749.99 plus \$40.00 for the cover. The landlord submitted photos of the damaged mattress pad, comforter and sheets into evidence. The total claim is for \$1,162.28.

**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 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.

With respect to the claimed damages that occurred during the tenancy, I find that, in establishing whether or not the tenant had complied with this requirement, this can best be confirmed through a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both

party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections 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.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition.

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 reduce the replacement cost by the depreciation of the original item.

In regard to the listed damages and losses, and despite the absence of the move-in and move-out condition inspection reports, I am able to find that the landlord incurred a cost of \$200.00 for carpet cleaning and \$75.00 for damaged bedding. With respect to the ruined mattress, I find that, due to the lack of verification of the original cost and lack of proof submitted to show that a new purchase was made, the landlord's claim did not satisfy the test for damages, and must be dismissed.

Given the above, I find that the landlord is entitled to compensation in the amount of \$275.00 plus the \$50.00 cost of filing.

### **Conclusion**

I hereby issue a monetary order in favour of the landlord for \$325.00. This decision is final and binding. 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: July 18, 2011.

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Residential Tenancy Branch