

## **Decision**

### **Dispute Codes:**

MNSD , MND, FF

### **Introduction**

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for cleaning and damage to the unit and to retain the security deposit in partial satisfaction of the claim. Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issue 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 and Evidence**

The landlord testified that the tenancy began March 2005. The current rent was \$1,250.00 per month and a security deposit of \$600.00 was paid. The landlord testified that when he purchased the property in 2010 there was no move-in condition inspection report confirming the state of the premises at the start of the tenancy. The landlord submitted into evidence written testimony in the form of an affidavit, a copy of an order of possession from the previous hearing, a copy of the move-out inspection report , copies of receipts for purchases and garbage disposal, a copy of a contractor's estimate, a copy of a cheque in payment for cleaning and several photographs,

The tenant was scheduled to move out on April 30, 2011. According to the landlord, when the tenant vacated, the unit was left in an unclean and damaged condition. The landlord is claiming \$225.00 for cleaning, \$14.00 for garbage removal, \$28.00 for replacing the lock and \$85.53 for cleaning supplies. The landlord is also claiming costs of repairs to the unit, including plastering and repainting the entry hall and upstairs rooms, a damaged door, retiling the bathroom due to broken tiles and a window repair. The claim for painting and repairs is \$3,139.45 for a total amount of \$3,682.83 in compensation.

The landlord testified that the tenant had advised by email that he had purchased two hours of cleaning time from a professional cleaning company. However, according to

the landlord , these cleaners were not available to do the cleaning prior to the re-rental date with new tenants and the landlord had to contract with his own cleaner.

The tenant disputed the landlord's claims. The tenant testified that, with the exception of some minor damage to a corner, the damage in the unit predated his tenancy. The tenant testified that he used existing holes in the plaster to hang pictures. The tenant testified that the plaster walls were 80 years old and were subject to significant wear and tear. According to the tenant the tile floors in the bathroom cracked due to the subfloor sagging over time. The tenant stated that he actually moved out 8 days earlier than ordered with the intent to finish up cleaning and making some minor repairs. However, he was ordered off the property by the landlord. The tenant stated that he had pre-paid for a professional cleaner to be scheduled by the landlord, and was not made aware of any problem with this arrangement. The tenant's position is that the landlord is not entitled to any compensation for the cleaning or alleged damage.

### **Analysis**

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 is due to actions of the Respondent in violation of the Act
3. Verification of the amount required to compensate for the damage.
4. Proof that reasonable steps were taken to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

I find that section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

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.

With respect to the move-in inspection, section 23(1) of the Act requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

In this situation, I find that there was no move-in inspection report documenting the condition of the unit at the time that the tenant moved in. While I accept that the photos do show some significant condition issues with the unit, the landlord has not sufficiently met the burden of proof to satisfy element 2 of the test for damages.

With respect to the locks, I find that section 37 requires that the tenant return the keys to the landlord. However, whether or not the tenant had failed to comply with section 37 of the Act by returning the keys at the end of the tenancy, I find that section 25 of the Act places the responsibility on the landlord, to rekey or otherwise alter the locks so that keys or other means of access for the previous tenant are not the same to give access to the new tenant. The Act provides that the landlord must pay all costs associated with the changes. Accordingly, I find that the landlord failed to satisfy element 1 of the test for damages with respect to this portion of the landlord's claim.

Based on the testimony and evidence, I find the application must be dismissed.

### **Conclusion**

I hereby dismiss the landlord's application in its entirety without leave to reapply.

The landlord is required to either refund or credit the tenant with the tenant's security deposit and interest of \$621.25 in accordance with section 38 of the Act. Therefore I issue a monetary order in favour of the tenant in the amount of \$621.25. This order must be served on the landlord and may be enforced in 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: August 22, 2011.

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Residential Tenancy Branch