



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent for the remainder of the fixed term, compensation for carpet cleaning and an order to keep the security deposit. Both parties appeared and gave testimony.

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

The issue to be determined, based on the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for damages or loss of rent.

### **Background and Evidence**

The landlord testified that the second fixed term tenancy with the tenant began on March 1, 2010 and was to run for 3 months until it expired on May 31, 2011. The rent was \$1,200.00 and a security deposit of \$575.00 was paid in March 2010 when the first tenancy agreement was signed. The landlord testified that this fixed term tenancy agreement permitted the tenant to extend the tenancy beyond the three-month expiry date, provided that the tenant informed the landlord by the end of April 2011 that they intended to extend the agreement. A copy of the tenancy agreement was in evidence verifying this term. The landlord testified that, on April 2, 2011, the tenant gave verbal and written Notice to end the tenancy prior to the expiry date of the contract, and was to leave on April 30, 2011, instead of May 31, 2011. The landlord testified that she advised the tenants at that time that she did not agree to shorten the fixed term and provided the tenant with data with respect to their tenancy obligations under the *Act*.

The landlord testified that the unit was advertised immediately seeking a replacement renter. The landlord testified that the tenant left on April 30, 2011 and provided the landlord a written forwarding address at that time. The landlord testified that a new tenant was found and the unit was then re-rented during the last week of May 2011. The landlord testified that, because she had incurred a loss of rent in the amount of \$925.00, she did not refund the tenant's security deposit, and on May 25, 2011 made

an application for dispute resolution seeking monetary compensation and to keep the tenant's \$575.00 security deposit in partial satisfaction of the claim.

The landlord testified that, when the tenant vacated, the unit was not left in a reasonably clean condition as required by the Act, in that the tenant failed to shampoo the carpet prior to vacating. The landlord stated that a cost of \$125.72 was incurred and she is claiming this amount. The landlord testified that no move-in or move-out condition inspection reports were completed in conjunction with the tenants.

The tenant disputed the landlord's claim for the loss of rent for the month of May 2011 on the basis that, despite what the written fixed-term agreement shows, the parties verbally agreed that the tenant could move out with one-month written notice. The tenants were adamant that the landlord made this commitment. The tenants also disputed that the landlord had practiced due diligence in her attempts to have the unit re-rented for the first of May 2011. With respect to the alleged need to have the carpet cleaned, the tenant stated that the carpet was cleaned prior to vacating and the tenant does not agree with the claim.

### **Analysis**

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis).

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. 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 this instance, the burden of proof is on the claimant, that being the landlord, to 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 respondent.

The landlord has based her claim on an alleged violation of the tenancy agreement by the tenant which, according to the landlord, caused the landlord to suffer a loss of \$925.00 in rent for May 2011, that would otherwise have been paid under the contract. The landlord supported this testimony with evidence showing that the tenant agreed to the term in question. I find that the tenant's testimony that a verbal agreement was made which nullified the terms in the written agreement did not have sufficiently evidentiary support to meet the burden of proof. I find that the landlord's claim for loss of rent meets all elements of the test for damages and the landlord is therefore entitled to be compensated \$925.00 for the portion of rent lost for May 2011.

With respect to the carpet cleaning, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for normal wear and tear. In this instance, the landlord did not sufficiently prove that the tenant failed to comply with the Act, and therefore the claim for the carpet-cleaning costs of \$125.72 must be dismissed.

Given the above, I find that the landlord has proven entitlement to compensation of \$975.00 comprised of \$925.00 for loss of rent and the \$50.00 cost of the application.

The landlord has requested to retain the tenant's \$575.00 security deposit in partial satisfaction of the claim. Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either: repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord was in possession of the security deposit held in trust on behalf of the tenant at the time that the tenancy ended on April 30, 2011 and the forwarding address was given to the landlord at that time. Under the Act the landlord was required to, either return the deposit or make an application for dispute resolution within the

following 15 days from that date. I find that the landlord made an application to keep the deposit, on May 25, 2011 and this was done after the 15-day deadline

Section 38(6) states: If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. (my emphasis)

The landlord's argument that the tenancy did not end until the date of expiry under the contract, which would have been May 31, 2011, does not apply because the tenant had ended the agreement on April 30, 2011 by vacating the unit on that date

Section 38(6)(b) imposes a compulsory requirement that the landlord must pay double the amount of the deposit. I find that the amount of the deposit as of the end of the tenancy was \$575.00 and the tenant would therefore be entitled to double this amount, which would equal \$1,150.00. to be refunded to the tenant. In setting off the \$975.00 owed to the landlord in damages, I find that the outstanding balance is \$175.00 in favour of the tenant.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$975.00 and can retain this amount from the \$1,150.00 owed to the tenant. I hereby issue a monetary order to the tenant in the amount of \$175.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if necessary.

This decision is final and binding and 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: September 02, 2011.

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Residential Tenancy Branch