



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNDC , MNSD, FF

### Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain the security deposit in partial satisfaction of the claim.

Although served by registered mail sent on July 18, 2008, the Tenant did not appear.

### 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* for money owed, damages or loss.

The burden of proof is on the applicant landlord to prove the claim.

### Background and Evidence

The tenancy began on March 1, 2011 as a fixed term tenancy, but the tenant moved out on May 31, 2011 prior to the expiry date. Rent was \$770.00 and a security deposit of \$385.00 was paid.

Evidence submitted included a copy of the tenancy agreement, a copy of the tenant ledger, copies of invoices, a copy of a condition inspection report with notations shown only in the "move-in portion and a statement listing the monetary claims totaling \$1,175.54. Also in evidence was a copy of the landlord's form titled, "Notice to Vacate" that had been filled out by the tenant and signed by both parties with respect to ending the tenancy.

The landlord testified that the tenant left June rent unpaid, and was seeking \$770.00 loss of rent and \$300 liquidated damages under the tenancy agreement. In addition, the landlord was claiming \$126.00 in cleaning costs, \$20.00 for supplies, \$40.00 for drapery cleaning, \$100.80 for carpet cleaning, \$52.94 for locks and keys, \$100.80 for

hauling and the \$50.00 cost of the application for dispute resolution. The total claim was for \$1,560.54.

### **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 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act.

With respect to cleaning and garbage removal, 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 reasonable wear and tear.

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, I find that , although a document purporting to be a move-in and move out condition inspection report was submitted and signed, this document did not clearly indicate that there was any damage or dirty conditions at all, in the spaces provided for each room in the move out portion of the report. Both the tenant and the landlord signed in the space marked, "*move out inspection*" to indicate their agreement with the content of the report. However, I find that either the report is either incomplete or, their signatures confirm that the parties were agreeing that there were no condition issues of any kind at the end of this tenancy.

I find that, at the bottom of the report, in a space titled, "*Security Deposit Statement*" some costs are filled in and the tenant did sign her name .

The signature was dated May 31, 2011 in agreement that the costs shown would be deducted from her security deposit. However, I find some contradiction in the fact that the total shown for the agreed-upon "deductions" of \$740.54 actually exceeds the tenant's \$385.00 deposit. Moreover, some of the expenses listed in this section of the form, which was signed on May 31, 2011, appear to be based on invoices and charges that were incurred at a later date. In addition, I find that the inclusion of "liquidated damages" in the landlord's self-generated move-in and move out condition inspection report form is not appropriate, as it relates to a contractual provision and is not in any way relevant to the condition of the unit. I find that the tenant's alleged consent has no merit under these circumstances.

With respect to the landlord's claims for loss of rent, I find that this would be premised on accepting that the tenant had unilaterally ended the fixed term prematurely and that there was a corresponding loss incurred by the landlord. With respect to the claim for liquidated damages, I find that this claim is also contingent upon proving that the tenant had unilaterally ended the fixed term prior to the expiry date.

However, I find that the document titled, "*Notice to Vacate*" which purports to be the tenant's written notice to end the tenancy, is actually a form created by the landlord that also contains other related agreement terms presumably placed on the form for the landlord's benefit. This includes a term indicating the tenant's permission for the landlord to show the unit and the tenant's consent to allow the landlord to "*retain the security deposit for outstanding rent*". These added terms are situated directly above where the tenant would be required to place her signature.

I find that, with the peripheral terms contained on the tenant's "Notice to Vacate" form, this document resembles an end-of-tenancy agreement. On this particular form, I find that in the space marked, "*Reason for Leaving*", the tenant had indicated that it was a "*mutual agreement between landlord and tenant*". There is also a notation, apparently added by the landlord, that appeared to be waiving the payment of liquidated damages. I find it evident that these two parties had entered into some kind of mutual agreement to end the tenancy, the terms of which are not clear. In any case, this would preclude the landlord's claim for loss of rent and for liquidated damages.

Given the above, I find that I can only be certain that the tenant did consent to the landlord retaining her deposit in full satisfaction of all damages.

**Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord has established a valid claim in the amount of \$385.00, consisting of all agreed-upon costs and damages.

I order that the Landlord retain the security deposit in satisfaction of the claim. The remainder of the landlord's application, including the cost of filing the application, is dismissed without leave.

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: September 23, 2011.

---

Residential Tenancy Branch