

## **DECISION**

Dispute Codes      MNSD, FF, MND, MNDC

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant applied for authorization to obtain a return of all of her security deposit pursuant to section 38. Both parties applied to recover the filing fees for their applications from the other party pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that the tenant served her notice to end tenancy by email and by letter on May 27, 2011, and that the tenant vacated the rental unit on June 30, 2011. The tenant's agent, the tenant's brother, confirmed that the tenant received a copy of the landlord's dispute resolution hearing package by registered mail sent by the landlord on July 5, 2011. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 23, 2011. I am satisfied that the parties exchanged these documents and their written evidence in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties is entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fees from the other party?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This month-to-month tenancy commenced on September 1, 2006. Monthly rent by the end of this tenancy was set at \$935.00, payable in advance on the first of each month

plus periodic payments for oil. The landlord continues to hold the tenant's \$450.00 security deposit paid on or about September 1, 2006.

The landlord entered undisputed evidence that no joint move-in condition inspection was conducted at the commencement of this tenancy. When this tenancy commenced, the tenant was occupying the premises with the landlord's daughter and renovations were underway that took some time to complete. The landlord testified that monthly rent was somewhat lessened because the renovations were ongoing for some time.

The parties agreed that a joint move-out condition inspection was commenced on June 30, 2011. The parties agreed that the tenant and her mother who accompanied her during that inspection did not remain on the premises for the entire duration of the joint move-out inspection as they became dissatisfied with the level of scrutiny the landlord and her witness were applying to this inspection. When the tenant and her mother departed, the landlord said she completed the inspection and took photographs entered into evidence for this hearing. However, the landlord testified that she did not complete the move-out condition inspection report she had commenced with the tenant and did not forward that report to either the tenant or to the Residential Tenancy Branch (RTB) for this hearing.

The landlord applied for a monetary award of \$262.00. She provided a \$112.00 invoice from a carpet company that she hired to repair damage to the carpet caused by a desk chair. The landlord and her witness, her daughter, who assisted her with cleaning the rental unit, testified that they both spent 6 hours cleaning the rental unit after the tenant vacated the rental unit. The landlord applied for a monetary award of \$150.00 for this cleaning.

The tenant applied to recover all of her security deposit plus interest as the tenant maintained that the premises were properly cleaned before the tenancy ended. The tenant's agent testified that the tenant's mother was an experienced cleaner, having operated a cleaning company with her husband in the past. He said that she steam cleaned the carpets and left the rental unit in very good condition at the end of this tenancy. Although the tenant and her mother provided written testimony, the tenant's agent testified that he had no hands-on personal evidence that he could give regarding the condition of the rental unit on June 30, 2011. The tenant's agent also claimed that the landlord was prevented from claiming against the security deposit because of the landlord's failure to conduct a joint move-in condition inspection at the commencement of the tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended.

The landlord and her daughter who helped the landlord clean the rental premises on the day the tenant vacated the rental premises provided direct oral testimony supported by written evidence and clear photographs regarding the condition of the rental unit at the end of this tenancy. The landlord’s daughter said that she was “surprisingly shocked” at the dirty condition of the rental unit at the end of this tenancy. She said that parts of the rental unit were “quite dirty.” The landlord had another witness who was also available for this hearing who attended the move-out inspection. It was not necessary to call this witness as the tenant’s agent conceded that this witness would likely provide similar testimony to that provided by the landlord and her daughter regarding the condition of the rental unit at the end of this tenancy.

The tenant’s agent provided his observations regarding the photographic evidence provided by both the landlord and the tenant. The tenant’s agent confirmed that the tenants did not clean all portions of the rental unit (e.g. fan intake area, some shelves), as was apparent in some of the landlord’s photographs. The tenant’s agent also conceded that the quality of the photographs submitted by the tenant was inferior to those taken by the landlord because the tenant took these photographs on her camera phone. On this point, I find that the tenant’s photographs were somewhat grainy and did not display sufficient detail to confirm the true condition of the rental unit at the end of this tenancy.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

Without these reports, it becomes more difficult to consider the true condition of the rental unit at the beginning and end of a tenancy. While I accept that the landlord commenced a joint move-out condition inspection using the RTB form for doing so, she did not continue with this process when the tenant and her mother left and did not send a copy of her completed report to either the tenant or the RTB.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions are included in section 24 with respect to joint move-in inspections.

Since the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, I also find that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean."

Based on the evidence before me, I find on a balance of probabilities that the more credible evidence presented indicates that some cleaning was still necessary after the tenants vacated the rental unit. Some of this cleaning may have exceeded what would have been expected for a rental unit of this age and for a tenancy of this duration. For these reasons, I find that the landlord is entitled to a monetary award of \$75.00 for

general cleaning that was required at the end of this tenancy. This represents a monetary award for half of the cleaning costs the landlord submitted in her application.

Based on the oral, written and photographic evidence and the landlord's invoice, I find that the carpet was damaged during this tenancy which incurred \$112.00 in costs to the landlord. I issue a monetary award in the landlord's favour in the amount of \$112.00 to reimburse the landlord for damage caused to the carpet during this tenancy.

I allow the landlord to retain the above amounts totalling \$187.00 (\$75.00 + \$112.00) from the tenant's security deposit. I order the landlord to return the remaining portion of the tenant's security deposit plus interest to the tenant.

As both parties were partially successful in their applications, I find that they are responsible for their own filing fees for their applications.

#### Conclusion

I allow a monetary award in the landlord's favour in the amount of \$187.00 for carpet repair and cleaning. I order the landlord to return the remaining \$277.38 portion of the tenant's security deposit (including interest) as set out below to the tenant forthwith.

Item	Amount
Carpet Repair	\$112.00
General Cleaning	75.00
Less Security Deposit plus Interest (\$450.00 + \$14.38 = \$464.38)	-464.38
<b>Total Monetary Order</b>	<b>-\$277.38</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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*.