



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for unpaid rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act.

The landlord's first witness testified that the tenant was served in person, on July 27, 2011 at his place of employment. However the respondent tenant did not appear and did not submit any evidence to dispute the landlord's claim.

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

The landlord was seeking a monetary order for rent, cleaning, repairs and fines

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 damages or loss.

### **Background and Evidence**

The tenancy originally began in November 2009 and ended on March 31, 2011. The rent was \$1,550.00 per month and the tenants paid a security deposit of \$750.00. The written tenancy agreement was in evidence.

The landlord testified that the tenant failed to pay a portion of rent owed for the month of March in the amount of \$775.00. The landlord testified and provided evidence showing that the tenant had accrued \$900.00 in fines from the strata council and had only paid \$200.00 of the debt, leaving \$700.00 still owed.

With respect to the condition of the unit, the landlord testified that no move-in and move-out condition inspection reports were completed, but stated that the unit was brand new when the tenancy began. The landlord pointed out that the photos submitted into evidence show that, at the end of the tenancy, the unit was left dirty and in disrepair. The landlord and the landlord's witness, testified that holes and scratches were left in the walls and cabinetry, carpets were stained, dog droppings littered the yard and garbage was left in the garage and on the property, including an abandoned

dog house. The landlord's application indicated that \$1,466.00 expenses were incurred including:

- \$907.20 for "carpet-cleaning and handyman services" including drywall repair, general and carpet cleaning, labour to install stair carpeting, door repair and garbage hauling.
- \$239.00 lawn and yard maintenance, outdoor cleaning, additional garbage removal.
- \$239.90 cost of new carpet
- \$60.00 for cabinetry repairs
- \$20.00 to replace dead tree near entrance.

The witness gave details with respect to the above repairs.

### **Analysis**

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay \$775.00 rent when it was due and the landlord is therefore entitled to compensation.

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 this instance, the burden of proof was on 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.

With respect to the claim for reimbursement for the fines levied by the strata council, I find that the charges apparently resulted from the tenant's failure to comply with the strata rules that formed part of the tenancy agreement. I find that the violation of the agreement resulted in a loss to the landlord and that all elements of the test for damages has been met to justify granting compensation to the landlord in the amount of \$700.00 for the fines paid and not reimbursed by the tenant.

With respect to cleaning and repairs by a tenant, 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. Section 32 also states that a tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant. However, a tenant is not required to make repairs for reasonable wear and tear. In addition to the above, 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.

Sections 23(3) and 35 of the Act dealing with the requirement for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

I find that the tenant's role in causing damage can usually 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.

In this instance, however, I find that the landlord failed to comply with the Act . However, despite the lack of the inspection reports, I find it evident that the unit was not left in a reasonably clean and undamaged state. I find that the landlord is entitled to a portion of the costs being claimed in the amount of \$750.00 for the cleaning, hauling and repairs.

I find that the landlord is entitled to total compensation of \$2,275.00 including \$775.00 for rental arrears, \$700.00 for fines, \$750.00 for repairs and cleaning and the \$50.00 cost of filing the application.

**Conclusion**

Based on the testimony and evidence I order the landlord to retain the tenant's \$750.00 security deposit in partial satisfaction of the claim, leaving a balance of \$1,525.00 as a in favour of the landlord. Accordingly, I hereby issue a monetary order to the landlord for \$1,525.00. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

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: October 17, 2011.

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Residential Tenancy Branch