



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND, MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent, cleaning and damages and an order to retain the security deposit in partial satisfaction of the claim.

Despite being served by registered mail sent on September 15, 2011, the respondent did not appear.

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

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for loss of rent, cleaning and repairs.

### **Background and Evidence**

The tenancy began on March 1, 2010 and ended on August 31, 2011. The rent was \$750.00 and a security deposit of \$375.00 was paid. The landlord testified that in mid-August the tenant gave inadequate notice to move out effective August 31, 2011 and the landlord was unable to find a tenant to re-rent the unit for the month of September due to the short notice, incurring a loss of \$750.00 which is being claimed.

The landlord submitted a copy of the tenancy agreement, a copy of the move-in and move-out condition inspection reports, photographs and a copy of the tenant ledger.

The landlord testified that the tenant did not leave the unit in a reasonably clean state and is claiming \$99.00 for the cleaning costs. The landlord also stated that there were some repairs required costing approximately \$60.00.

### **Analysis**

The Act states that rent must be paid when it is due, under the tenancy agreement, and I find that the tenant did not have any rental arrears at the time the tenancy ended.

However, I find that the landlord's claim is actually for loss of revenue for the month of September due to the unit remaining vacant because the tenant did not give one month Notice to end the tenancy as required under the Act.

With respect to a claim for damages, 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 landlord or tenant 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 reasonable steps 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 the tenant did violate the Act with respect to the amount of notice to vacate, the landlord did suffer a loss of rent as a result and that the landlord did take reasonable steps to mitigate the loss by trying to obtain a new tenant for the month of September. Accordingly, I find that the landlord is entitled to be compensated for the loss of \$750.00 rent.

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. In proving whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. I find that the move-in and move-out condition inspection reports and the photos verify that there were some cleaning and condition issues at the end of the tenancy.

I find that the landlord is entitled to be compensated for the cleaning costs claimed of \$99.00.

With respect to the damage that occurred during the tenancy, I accept the landlord's evidence that there was some damage to the door frame and the intercom. However, I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced item, reference can be made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

Sections 33 and 37 of the Act also provide that a tenant is not required to compensate the landlord for normal wear and tear. In this instance, I find that the claims made by the landlord relate to items likely damaged through normal wear and tear and had probably exceeded their expected useful life. I find that this claim therefore failed to satisfy elements 1 and 2 of the test for damages and must therefore be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of \$899.00 comprised of \$750 for loss of rent owed, \$99.00 for cleaning and the \$50.00 cost of the application. I order that the landlord retain the \$375.00 security deposit being held in trust for the tenant, leaving a balance of \$524.00 owed to the landlord.

### **Conclusion**

I hereby grant the landlord a monetary order for \$524.00. This order is final and binding and must be served on the Respondent. If not paid, the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's 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: October 26, 2011.

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Residential Tenancy Branch