



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNSD, MNDC, FF

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damage or loss under the Act and to keep the security deposit.

Both the landlord and tenant were present and gave testimony in turn.

### Preliminary Matter:

In this application, the landlord applied for monetary compensation for damages. However, the landlord has also requested that it retain the tenant's security deposit in partial satisfaction of the claim. On the issue of whether or not I have jurisdiction to make a determination with respect to the status of the security deposit, I found it necessary to consider a previous dispute resolution decision issued on April 20, 2012. These parties were involved in a hearing held on April 10, 2012 on the tenant's application seeking an order for the return of his security deposit. The matter was determined and the tenant was successful in receiving a monetary order for the security deposit in the prior decision. Pursuant to that decision and order issued on April 20, 2012, the landlord had a legal obligation to return the tenant's security deposit forthwith.

*Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings or orders made by the Dispute Resolution Officer that presided over the prior hearing would not fall within my authority to hear or alter.

In light of the above, I find that the portion of the landlord's application relating to the request for an order to retain the security deposit had already been dealt with the previous hearing and I therefore lack jurisdictional authority to deal with this particular matter. I find that, to consider this matter again would violate the principal of *res judicata*. *Res judicata* is a rule in law establishing that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim constitutes an absolute bar to any subsequent application involving the same claim or issues. I find

that, under the legislation I am bound by previous findings and any decision that I render cannot contradict the decision dated April 20, 2012.

That being said, although the issue of the security deposit cannot be dealt with again, the landlord's claims for damages or loss under section 67 of the Act have not yet been the subject of a prior hearing. As such, the portion of the landlord's application seeking monetary compensation for damages can validly be determined during the proceedings today.

### **Issues to be Decided**

The issue to be determined is whether the landlord is entitled to monetary compensation under section 67 of the *Act*.

**Burden of Proof:** The landlord has the burden of proof to prove that the claims for compensation are justified under the Act.

### **Background and Evidence**

The tenancy began in July 2009 and rent was \$525.00 per month.

The landlord testified that the tenancy ended through a one month Notice to end Tenancy served by the tenant and received by the landlord at the end of January 2012 . terminating the tenancy agreement effective at the end of February 2012. The landlord testified that a move-in condition inspection report was completed and submitted the form signed by the tenant indicating that the carpeting and walls were in good condition when the tenant moved in. The landlord testified that the unit was freshly painted in 2009 and that the carpets were only 3 years old at the start of the tenancy.

The landlord testified that during the final month of the tenancy the parties discussed arranging the move-out inspection more than once and , according to the landlord, a letter was given to the tenant with respect to his obligation to participate in a move-out inspection. The landlord stated that no actual date or time was set up for the move-out inspection and the tenant then vacated before the move-out inspection could be firmly scheduled. According to the landlord, no forwarding address was provided by the tenant at that time, so there was no way for the landlord to notify the tenant in writing to give the tenant alternative times for the inspection, nor a formal notice offering a final opportunity for inspection. Therefore, according to the landlord, they had no choice but to go ahead and complete move-out condition inspection report without the tenant.

The evidence included a copy the move-out inspection report completed in the tenant's absence. The choice of codes shown on the landlord's move-in and move-out condition inspection report form included:

- a check-mark for “satisfactory”,
- “C” for “Needs Cleaning”,
- “D” for “*Damaged*”,
- “P” for “*Needs Painting*”
- “M” for “*Missing*”
- “W” for “*Normal Wear and Tear*” and
- “S” for *Stained*.

Under the column titled, “*Floors, Carpets, Linoleum*”, this report did not feature any of the above codes, but indicated that the carpets and linoleum had been “*REPLACED*”. The landlord explained that this notation was a clear indication that the carpets were damaged beyond restoration by cleaning or repairing.

The move-in inspection form indicated that, when the tenant moved in, the walls were “*PAINTED*”. The move-out portion of the inspection form completed at the end of the tenancy showed “*P*” under the column titled “*Walls, Cielings*” and this code apparently indicated that the entry, living room, bathroom and kitchen were in need of painting.

The tenant disputed the landlord’s testimony and stated that he was never provided with any written notification to schedule the move-out condition inspection during his final month of tenancy. The tenant disputed that he damaged the carpet and denied that the walls were subject to anything other than normal wear and tear.

#### Analysis –Monetary Claim

In regard to an Applicant’s right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the 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

The burden of proof is 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. .

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. (my emphasis)

I find that the tenant's role in causing damage can normally 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, the tenant had participated in the move-in inspection and signed the form agreeing to the condition as stated. However, the tenant did not participate in the move-out inspection and did not sign agreement with the stated condition put forth by the landlord.

In regard to the landlord's allegation that the tenant failed to cooperate with the landlord's effort to arrange a move-out condition inspection, I find that the Act contains provisions that anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

In this instance, the tenant stated that he had never declined to participate in the landlord's attempt to schedule the move out condition Inspection because he was not properly notified of the inspection despite having provided a forwarding address to the landlord.

A landlord can complete the inspection in the absence of the tenant by following all of the required steps and must be prepared to prove that this was done. I find that there is insufficient proof that the landlord ever issued the notice on the approved form giving this tenant a final opportunity to participate in the move out condition Inspection and did not prove that such a notice was ever properly served on the tenant.

In any case, regardless of the other disputed circumstances, I find that the move out condition inspection report was not completed in compliance with the Act.

The form indicated that the last day of the tenancy was February 29, 2012. However, I find that the space beside "*move-out inspection date*" has been left blank and it is therefore unclear exactly when the inspection took place. . The tenant's forwarding address is shown in writing on the bottom of the form. But the landlord testified that they did not receive the tenant's forwarding address until March 22, 2012.

The cost of the replaced flooring is also shown on the move-out inspection form. Yet the invoice for the flooring is dated March 22, 2012, which is three weeks after the tenant had moved out.

Either the form was improperly altered after the purported date of inspection stated to have occurred on the last day of the tenancy, or the inspection was carried out on March 22, 2012, long after the tenancy had already ended.

If the landlord had been in receipt of the tenant's written forwarding address prior to the date that the move out condition inspection report was completed, then there is no justification for the landlord's failure to serve the tenant with a written final opportunity for inspection prior to completing the inspection in the tenant's absence. I find that the contradictory evidence with respect to the date that the move-out inspection report was completed, affected the landlord's ability to sufficiently to meet the burden of proof to show that the tenant refused to cooperate. I find that evidence that consists of disputed verbal testimony and documentation that was not completed in compliance with the Act does not adequately support this monetary claim.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord has failed to satisfy the landlord's burden of proof in establishing and proving the monetary claim for damages. The landlord's application is hereby dismissed in its entirety without leave to reapply.

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: June 04, 2012.

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Residential Tenancy Branch