



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MND, MNSD

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning in compensation for damage or loss under the Act.

The landlord appeared and despite being served by registered mail sent on June 8, 2012, the tenant did not appear.

### **Preliminary Issue**

Although the landlord had named two different co-tenants in the application, only one was served by registered mail sent to the forwarding address that this one co-tenant had provided to the landlord.

For this reason I find that the landlord can only proceed against the tenant who was properly served with the Notice of Hearing documents and the matter can not proceed against the co-tenant not served.

### **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 damages.

### **Background**

The landlord testified that a tenancy began on March 1, 2012. The rent was \$875.00 per month and a \$437.50 security deposit had been paid. In a previous hearing, in which the landlord successfully sought an Order of Possession, the landlord had also been granted a monetary award of \$50.00 to be retained from the security deposit, leaving \$387.50 still being held in trust as a security deposit.

Submitted into evidence by the landlord were copies of move-in and move-out condition inspections, receipts, photos and copies of communications. No evidence was submitted by the tenant.

The landlord testified that, at the end of the tenancy, a move-out condition inspection was conducted and both the landlord and the tenant signed the form. The landlord found that the unit was not clean, and the carpet was damaged. The landlord submitted photos to verify that some cleaning was required. The landlord testified that there was substantial damage to the carpet including burn holes, pet odours and an area where the carpet was significantly frayed. The landlord made reference to the move-in and move-out condition inspection reports, the photographic evidence that showed the damage and the receipts proving the cost. The landlord testified that the carpet was approximately 3 years old, but had to be removed because the landlord found that it could not be restored. The landlord submitted evidence of expenditures for cleaning and repairs exceeding the tenant's remaining \$387.50 security deposit. However, the landlord had restricted her request for compensation to the amount of the remaining security deposit in full satisfaction of the claim.

### **Analysis:**

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 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 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. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage and, finally, must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regard to the cleaning and repairs, I find that section 37(2) of the Act also 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.

I find that the landlord provided sufficient evidence to satisfy the test for damages including receipts to confirm the expenditures. I find that the tenant did not comply with section 37 of the Act and that the violation ultimately resulted in a loss for the landlord exceeding \$387.50, including cleaning costs, flooring purchases and labour to restore the rental unit.

Accordingly I find that the landlord is entitled to retain the remaining \$387.50 security deposit in full satisfaction of all claims for cleaning and repairs.

### **Conclusion**

I hereby order that the landlord is entitled to retain the tenant's remaining security deposit of \$387.50 in full satisfaction of this claim.

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: August 07, 2012.

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Residential Tenancy Branch