



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MND MNSD MNDC MNR FF

### **Introduction**

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act) and an order to retain the security deposit in satisfaction of the claim.

Both parties attended the hearing and each gave testimony in turn.

### **Issue(s) to be Decided for the Landlord's Application**

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 and to retain the security deposit.

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The landlord testified that the two-year fixed term tenancy began on November 1, 2011 for rent of \$1,730.00, that included a flat charge of \$230.00 for utilities and a security deposit of \$8635.00 was paid. The landlord testified that the tenant was permitted to move in three days early at no extra charge as the unit was not completely cleaned and repaired at the time. The tenant gave one-month's notice to terminate the tenancy and moved out on May 31, 2012.

The landlord was seeking to retain the \$865.00 security deposit in compensation for damage and loss under the Act including \$150.00 cleaning costs, \$700.00 for painting, \$212.80 in floor repairs, \$154.56 for replacing the garage door remote, \$865.00 rent still owed for May and \$500.00 liquidated damages pursuant to a term in the tenancy agreement, for a total claim of \$2,582.36. In the claim, the landlord had mistakenly included the tenant's \$865.00 security deposit a debt owed in error, when, in fact, the deposit is held in trust and always counted as a credit for the tenant towards any money found to be owed to the landlord.

The landlord testified that, when the tenant moved in, a move-in condition inspection report was completed and all issues with the suite were duly noted on the form. The landlord testified that the tenant had signed the move-in condition inspection report. The landlord testified that the parties met to do the move-out inspection at the end of the tenancy. However, according to the landlord, the tenant refused to sign the form, so it was never fully completed

### Cleaning

The landlord stated that the unit was not left in a reasonably clean condition as required by the Act and had supported this claim with a copy of the move-out condition inspection report and photos of various areas of the unit, including the stove, inside drawers, the kitchen sink faucet and close-ups of the bathroom floor and shower-door tracks. The landlord was claiming \$150.00 for the cleaning, but did not submit an invoice. There were also photos of the exterior of the unit, but the landlord acknowledged that these were common areas and stated that the cost to clean the yard was not included in the \$150.00 claim.

The tenant disputed the landlord's testimony. The tenant testified that when he moved into the unit, it was extremely dirty and damaged. The tenant stated that he had to clean every part of the unit and remove discarded items left by the previous tenant. The tenant testified that he paid for the cable connections in the unit to be repaired when he added an additional outlet and incurred a cost for the repairs in the amount of \$200.00 which was never reimbursed. The tenant acknowledged that when he vacated the unit, some areas were not left reasonably clean. However, according to the tenant, most of the rental unit had been cleaned and it was returned to the landlord's possession in much better condition than when the tenant moved in. The tenant does not agree with the \$150.00 cleaning costs being claimed by the landlord.

### Repairs

The landlord testified that the tenant left the unit in need of repainting and submitted photos of wall damage and an estimate sent by email in the amount of \$700.00.

The landlord is also claiming \$212.80 for damages to the stairs. Photos were submitted and the email also contained an estimate for this cost.

In addition to the above, the landlord is claiming \$154.56 to replace a missing garage door remote not returned by the tenant. The landlord submitted a copy of the move-in and move-out condition inspection reports indicating that a remote was given to the tenant when the tenancy began. There was a notation that, during the move-out inspection, the tenant claimed not to have ever received the remote.

The tenant disputed the above claims for repairs on the basis that the wall damage and need for repainting pre-existed his tenancy and the flooring throughout the home was already badly in need of repair.

The tenant pointed out that there was already substantial damage, some of which was noted on the move-in inspection report. The tenant testified that the landlord only repaired a portion of the damage that was there when the tenant moved in. The tenant testified that the landlord failed to repaint patched areas of the walls. With respect to the garage door remote, the tenant stated that he was never given a remote, but instead used the key pad during his tenancy.

### Rent & Liquidated Damages

The landlord stated that the tenant had only paid half of the rent for May 2012, which was the final month of the tenancy, and the landlord is claiming \$865.00. The tenant acknowledged that he had deducted the \$865.00 security deposit from his final month of rent.

The landlord testified that the tenant had signed a two-year lease, but terminated it long before the expiry date. The landlord pointed out that the tenancy agreement signed by the tenant contained a liquidated damages clause that imposed a charge of \$500.00 in the event that the tenant chose to end the tenancy prior to the expiry of the fixed term. The landlord is claiming \$500.00 because the tenant did not fulfill the tenancy which was to expire on October 31, 2013.

The tenant disputed that the amount of the liquidated damages clause was a genuine estimate that reflected the true costs of re-renting the unit. The tenant felt that the amount was excessive.

However, the landlord pointed out that the amount of the liquidated damages represents a genuine pre-estimate of the losses that would be incurred in paying an agent to take care of tasks involved in re-renting, including creating and submitting advertisements, showing the unit, screening applicants, preparing the documentation, conducting the move-in and move out condition inspection reports, meeting with the tenants to sign the lease and handling issues that arise the move-in process.

### 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 this Act, the regulations or their 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 order payment in such 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

Section 37 of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

In establishing 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. In other words, through the submission of valid and compliant move-in and move-out condition inspection reports containing both party's signatures. I find that the testimony and evidence of the two parties showed that there were conflicts that affected the move-out condition inspection process and the form was never completed.

Section 35 of the Act requires that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, (a) on or after the day the tenant ceases to occupy the rental unit, or, (b) on another mutually agreed day and it goes on to say that "the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection." (my emphasis)

In any case, I find that the deficiencies in the unit being claimed were not noted on the move-out condition inspection report and it was not dated nor was it properly signed by both parties.

With respect to whether or not the landlord is entitled to costs for cleaning, I find the standard imposed by the Act is that the unit be left in a *reasonably* clean condition. Despite the photos showing that the stove was less than clean and that there was some grime evident in the shower-door tracks and on the floor, I find that most areas of the unit appear to have been left in a fairly clean condition. It is not a requirement under the Act that a tenant leave the unit spotless and "move-in ready" for the next occupant.

Element 2 of the test for damages requires that the claimant prove that the other party violated the Act. I find that there was no significant violation of section 37 of the Act because the unit was left reasonably clean.

With respect to the cost of repainting and repairs to the steps, I accept the tenant's testimony that there were existing issues with the patching and paint on the walls and damage to the floors that were present upon the tenant's arrival. Even if I accepted that the tenant was responsible for damage to the floors and walls in violation of the Act, I find that the landlord did not submit invoices to verify the costs being claimed and thus failed to meet element 3 of the test for damages.

I find that the claim for the garage door opener was not proven. The tenant denied ever receiving a remote opener and the landlord did not adequately verify the costs incurred for the purchase of the new opener.

Given the above, I find that the landlord's claims for compensation with respect to the repainting, damaged flooring and the garage door opener have not met the test for damages and must be dismissed.

In regard to the rent owed in the amount of \$865.00, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. I find that the landlord is entitled to \$865.00 for the unpaid rent.

With respect to the liquidated damages clause, section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under both the Act or the tenancy agreement.

I find that both parties signed the agreement containing the \$500.00 liquidated damages clause. However, the tenant's position is that the amount of the liquidated damages is unfairly excessive and does not reflect the genuine costs of re-renting.

According to the Residential Tenancy Guidelines:

"Liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into." (my emphasis)

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I find that the amount of the liquidated damages represents the equivalent of one-third of one month rent and I accept the landlord's explanation that this is the estimated outlay to pay the agent to take care of tasks involved in re-renting. I find that the \$500.00 is a genuine pre-estimate of the potential loss in having the fixed term tenancy terminated prior to the agreed-upon expiry date.

I also find that the tenant did benefit from the fact that the landlord took immediate steps to find a replacement tenant to move in and thereby limiting the tenant's liability to pay loss of rent for months that the unit may otherwise have been vacant.

Given the above, I find that the liquidated damages clause is valid and enforceable and the landlord is entitled to compensation in the amount of \$500.00.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord entitled monetary compensation in the amount of \$1,415.00 comprised of \$865.00 for rent owed, \$500.00 liquidated damages and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$865.00 security deposit in partial satisfaction of the claim leaving a remainder of \$550.00 still outstanding.

I hereby issue a monetary order in favour of the landlord in this amount. This order must be served on the respondent and may be filed in the Supreme 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: August 16, 2012.

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Residential Tenancy Branch

