



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNSD, MND, MNR, 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 pet damage deposit in partial satisfaction of the claim.

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

### 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 June 2011 and rent was \$1,800.00 per month. A security deposit of \$900.00 and pet damage deposit of \$500.00 was collected by the landlord.

The landlord testified that the parties ended the tenancy on June 15, 2012 and the tenant agreed that the landlord could retain the \$900.00 security deposit for the rent owed for the portion of June during which she was still residing in the unit. The landlord testified that the tenant provided a written forwarding address prior to the end of the tenancy.

The landlord testified that a move-in condition inspection report was completed and signed when the tenancy began. The landlord testified that at the end of the tenancy, a move-out condition inspection report was completed by the landlord in the tenant's absence. According to the landlord, this occurred because the tenant had become verbally hostile during the inspection and the landlord felt it necessary to ask the tenant to leave the premises. Although the landlord stated that they had submitted a copy of the move-out condition inspection report into evidence, this evidence could not be found in the file nor scanned on the system at Residential Tenancy Branch. However, the

tenant confirmed that she did receive this evidence and was provided with a copy of move-out condition inspection report by the landlord

The tenant disputed the landlord's testimony with respect to what transpired during the aborted inspection. The tenant stated that the rental unit was left in immaculate condition when she vacated. The tenant testified that she attended the move out condition inspection with the landlord and, after a thorough inspection inside the unit, during which the landlord made no notations on the form, the landlord stated that the unit was in satisfactory condition inside. The tenant testified that, when the parties went outside and the landlord told the tenant that she would be charged for the cost of repairing brown patches in the lawn, the tenant objected. The tenant testified that when she protested that the condition of the lawn had nothing to do with her pet, it was the landlord that became irate and unreasonable during the inspection and demanded that she leave immediately.

The landlord testified that the unit was left in an unclean and damaged condition when the tenant vacated. The landlord submitted a list of monetary charges including the following:

- \$160.00 for 8 hours of cleaning the windows and walls
- \$336.00 for damaged hardwood floors in the dining room
- \$71.66 for fertilizer and grass seed
- \$25.00 to replace 11 light bulbs
- \$50.00 to repair broken window latches

The landlord stated that the cleaning of the walls and windows was necessary, but this was disputed by the tenant.

The landlord acknowledged that the hardwood floors have not yet been repaired, but the amount of the claim was based on a written estimate from a flooring specialist. However, no copy of this estimate was in evidence. The tenant denied causing any damage to the floors.

In regard to the charges for fertilizer and grass seed, the landlord attributed the damage to the fact that the tenant's dog was in ill health and likely damaged the lawn. The tenant disputed that the damage was caused by her pet and pointed out that her dog had passed away 9 months previously.

In regard to the light bulbs, the landlord stated that there were many burned out bulbs in the chandelier and exterior lights. The tenant argued that only a couple were burned out and these were difficult to reach due to the ceiling height. The tenant stated that

some bulbs seemed to burn out quickly in some light fixtures. The tenant also pointed out that not all of the bulbs were working when she moved in.

In regard to the broken window latches, the landlord testified that these latches were recently replaced and it appeared that the window had been forced by someone, thereby damaging the latches. The landlord acknowledged that they have not yet been replaced. The tenant testified that she had no knowledge of any broken latches and said that this was never pointed out to her during the move out condition inspection.

The tenant disputed all of the landlord's claims.

### 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.

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 conditions that were put forth by the landlord.

In regard to the landlord's allegation that the tenant failed to cooperate with the move-out condition inspection, I find that the Act contains provisions that anticipate situations where arranging an inspection may be a problem. 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, I find that the tenant did not decline to participate in the move out condition inspection but the inspection process broke down due to an argument and was not completed on the day scheduled.

If the landlord feels that the tenant is not cooperating in completing the inspection, the landlord has a right to complete the inspection in the absence of the tenant, but must do so by following all of the required steps and should be prepared to prove that this was done. I find that there is insufficient proof that the landlord ever issued this tenant a

final opportunity to participate in the move out condition Inspection on the approved form and failed to prove that such a notice was ever properly served on the tenant.

For this reason, I find that the landlord cannot rely on the contents of the move out condition inspection report that was not signed by the tenant to support the allegation that there was damage to the unit or that the unit was not left reasonably clean.

Aside from the move out condition inspection report, I find that the landlord's monetary claims were only supported by the landlord's written and verbal testimony that was disputed by the tenant. I find that the evidence was insufficient to satisfy all elements of the test for damages.

Although the landlord did not furnish receipts for the replacement light bulbs, based on the tenant's testimony agreeing that some bulbs were not working at the end of the tenancy, I find that the landlord is entitled to compensation in the amount of \$12.00 to replace the bulbs.

Given the above, I find that the remainder landlord's claims for monetary compensation must be dismissed.

Accordingly, I find that the landlord is entitled to retain \$12.00 from the pet damage deposit being held for the tenant, the remainder of which must be refunded.

In regard to the return of the pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. However, the Act states that the landlord can retain a deposit if the tenant agrees in writing that the landlord can keep the deposit to satisfy a liability or obligation.

I find that the tenant gave the landlord written permission to keep the security deposit, but did not give the landlord written consent to retain the pet damage deposit. I find that, while the landlord did make an application to keep the pet damage deposit in partial satisfaction for damages, the landlord's application was filed on July 4, 2012 and therefore was not filed within 15 days of receiving the tenant's forwarding address and the end of the tenancy.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the

tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's pet damage deposit was \$500.00 and the tenant is entitled under the Act to a refund of double the deposit, amounting to \$1,000.00, less the estimated cost of the purchase of replacement light bulbs by the landlord.

### **Conclusion**

I find that the landlord is entitled to monetary compensation in the amount of \$12.00 and the tenant is entitled to a refund of \$1,000.00. In setting off these two amounts I find that the tenant is entitled to a monetary order for the remainder, which is \$988.00.

I hereby issue a monetary order in favour of the tenant in the amount of \$988.00. The order must be served on the landlord and may be enforced through Small Claims Court if left unpaid.

As the landlord's application has been only marginally successful, I find that the applicant is not entitled to be reimbursed for the \$50.00 cost of this application.

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: September 13, 2012.

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Residential Tenancy Branch