



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MND, MNR, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent or loss of rent, repairs, cleaning and garbage removal and to retain the tenant's security deposit in partial satisfaction of the claim.

The landlord and the two co-tenants appeared and each party gave testimony in turn.

### **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.

### **Preliminary Matter**

The landlord had submitted late evidence that was received by the respondent and this was accepted and considered. The tenant had also submitted late evidentiary material in defense against the landlord's application, which was served on the landlord and this evidence was accepted and considered.

However, the tenant's evidence package also purported to include a claim for damages by the tenant against the landlord.

Section 6 of the Act states that in regard to the rights, obligations and prohibitions established under the Act or tenancy agreement, a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute. *disputes*].

With respect claiming monetary 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 and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances and therefore, in order to determine the merit of the claim.

I find that, although the tenant may have intended to make a cross application claiming for monetary compensation against the landlord, the tenant did not file their own application for dispute resolution to have this matter heard and determined.

Accordingly, because the landlord's application for compensation was the only application before me, I declined to hear the tenant's claim for monetary compensation. However, any and all of the tenant's evidence and testimony that pertained specifically to their defense against the landlord's claim was considered.

### **Background**

The landlord testified that a tenancy originally began on January 1, 2010. A copy of the tenancy agreement was submitted into evidence. The rent was \$970.00 per month due on the first day of each month and a \$475.00 security deposit had been paid. A move-in condition inspection report was completed and a copy was in evidence.

The landlord testified that on December 15, 2011, the tenant gave written notice that the tenancy would be ending as January 15, 2012. A copy of the tenant's notice was in evidence. The landlord testified that the tenant was advised in writing that any One Month Notice to End Tenancy from the tenant must be effective at least one month from serving it and fall on the day before the day rent was due in order to be compliant with the Act. The landlord pointed out that a One Month Notice to End Tenancy dated December 15, 2011, could therefore not be effective until January 31, 2012.

The landlord testified that the tenant failed to pay rent for the month of January, properly due on January 1, and vacated the unit on January 2, 2012 without leaving a forwarding address. The landlord testified that the tenant left before the landlord could arrange the move out condition inspection and therefore it was later completed in the tenant's absence.

The landlord testified that, although the unit was advertised from the date the tenant gave notice on December 15, 2011, a new tenant was not obtained until February 1, 2012 and the landlord is claiming loss of \$970.00 rent for January.

The documents submitted by the landlord showed that the total amount being claimed on the application for damages was \$2,095.00. This amount was evidently based on the \$970.00 rent loss plus other costs listed on a sheet including, \$250.00 for unit cleaning and removing refuse, \$75.00 for carpet cleaning, \$400.00 for painting a second coat over walls, \$200.00 window replacement and \$200.00 for the bedroom door. The document indicated that the tenant was not charged for the roof repair, water damage from the leak and fumigation treatment.

During the hearing, the landlord testified that when the tenant vacated the unit, it was not left reasonably clean and undamaged. The landlord made reference to invoices documenting the following costs:

- \$161.28 for 8 hours of general cleaning
- \$137.75 for carpet cleaning
- \$168.00 for removal of items and debris
- \$369.88 to repair a broken window pane
- \$200.00 to replace an interior door and bi-fold closet door

The landlord testified that the tenant agreed that the landlord could retain the \$475.00 security deposit to pay for the damage left but the damage exceeded this amount. The landlord testified that the tenant did not provide a written address where they could be served and the landlord was forced to deal with the move-out inspection without the tenant. The landlord stated that they also had to remove items left by the tenant, do a final cleaning of the unit and replace two doors badly damaged by the tenant. The landlord did not know the exact age of the doors and stated that the replacement doors were taken from their stock.

The tenant disagreed with most of the above claims. With respect to the rent for January 2012, the tenant's position is that they only remained in the unit for two days and therefore would not owe rent for the entire month of January. The tenant testified that, although they had attempted to give their Notice effective for January 15, 2012, they subsequently agreed to remain in the unit and to pay the rent for the entire month of January 2012. The tenant stated that they were forced to stay because the landlord informed them that the One Month Notice to End Tenancy they had served could not be effective, under the Act, until the end of January. However, according to the tenant, this plan was then thwarted by the fact that a serious leak occurred in the ceiling on December 27, 2011 causing an electrical hazard and necessitating emergency repairs.

The tenant testified that, in addition to the disruption caused by the water leakage into the light fixture of their child's room, the electricity had to be turned off, affecting other rooms as well. The tenant testified that they felt that it was necessary to vacate early due to the emergency situation and serious safety concerns they had about potential harm to their family. The tenant pointed out that, had they remained, they would not have been able to use a portion of the unit and would have to function around the repairs. The tenant acknowledged that they left the unit without fully cleaning it and without repairing a broken window. However, according to the tenant, they left a note with their phone number and asked the landlord to call them with respect to the situation. The tenant stated that they were willing to return to do the clean-up, but could not stay in the unit. However, the landlord never contacted the tenant. In any case,

according to the tenant, they were aware that the landlord would likely have to complete some repairs and do a thorough clean-up from the water infusion and possibly some renovation work as well. The tenant testified that this would be necessary whether or not the tenant had fully cleaned up the unit.

The tenant did not dispute that the window was broken by the tenant. With respect to the claimed door damage, the tenant stated that this occurred due to a deficient lock that was placed on the outside of the door, instead of on the inside, resulting in the tenant being locked inside of the room and having to force their way out.

### **Analysis: Monetary Claims**

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 claimant, that being 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.

With respect to the claim for loss of rent for the month of January, 2012, I find that section 26 of the Act requires that rent be paid on the day it is due. In this case the rent for January was due on January 1, 2012. The tenancy was set to end in compliance

with the Act on January 31, 2012. Accordingly, I find that the tenant did not comply with the Act and that the landlord would, under normal circumstances, be owed \$970.00 for January 2012. However, it is clear that there was an incident that occurred near the end of December 2011, that adversely impacted the tenancy. The fact that such an incident occurred, would not entitle the tenant to unilaterally terminate the tenancy based on the problems, particularly without first obtaining an order to do so.

I find that section 32 of the Act imposes responsibilities on the landlord who must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Based on the testimony, I find that when the water leak issue arose, the landlord did act without undue delay in rectifying the problem with respect to the roof and also addressed the electrical issues in a timely way. Therefore I find no violation of the Act by the landlord.

However, under the contract, the tenant had signed the agreement with an expectation of renting an intact unit, that was safe for the family to reside in and I find that this basic right was compromised, through no fault of the landlord, for a period of time. Although the tenant chose to terminate the tenancy early instead of remaining in the unit, it is clear that, had the tenant stayed, they would likely have been entitled to a rent abatement for the loss of use of a portion of the unit during the last week of December and first part of January. For this reason, I find that the amount of rent to which the landlord was entitled would need to be reduced to \$475.00.

In regard to the cleaning and repairs 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. I find that it is clear that this did not occur in accordance with the standards required under the Act. However, I also find that some clean-up would need to be done by the landlord after all of the repairs and renovation work had been completed. Accordingly, I find that a portion of the costs for general cleaning, carpet cleaning and debris removal should be borne by the landlord, and I set the tenant's portion at \$250.00 for these costs.

With respect to the costs of repairing the broken window, I find that the landlord is entitled to \$369.88 for repairs.

With respect to the damage to the doors, I find that the malfunction of the improperly installed lock contributed to the cause of the damage. I also find that the age of the doors was not established and the actual costs were not adequately confirmed by the

landlord. Therefore I find that the landlord's claim does not meet all elements of the test for damages and must be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of \$1,144.88 comprised of \$475.00 for loss of rent for January, \$250.00 for cleaning, carpet cleaning and debris removal, \$369.88 for window repairs and the \$50.00 cost of filing this application.

I order that the landlord is entitled to retain the tenant's \$475.00 security deposit leaving \$669.88 outstanding and I grant a monetary order to the landlord for this amount.

### **Conclusion**

I hereby grant a monetary order in favour of the landlord for \$669.88. This order must be served on the tenant and if unpaid, may be enforced through Small Claims 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: September 24, 2012.

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Residential Tenancy Branch