



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND, MNSD, FF

### **Introduction**

This was an application by the landlord filed on September 13, 2012 for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of any monetary claim, and to recover the filing fee. The application was orally amended by the landlord in the hearing to *exclude* the request for *unpaid rent*, and the claim for *\$78.59 for replacement of a faucet set*.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

### **Background and Evidence**

I have benefit of a tenancy agreement document signed by both parties subsequent to the start of the tenancy, as well as the move in and move out inspection report documents. In addition, the landlord provided several invoices / receipts in support of their claims.

The undisputed relevant testimony in this matter is that the tenancy started October 01, 2008 and ended August 31, 2012 when the tenant vacated. Rent payable was \$1500.00 per month. The landlord collected and currently holds the security deposit in trust – in the amount of \$750.00. During the hearing the parties agreed as to the landlord's claims for carpet and drapes cleaning in the sum of \$190.00.

The landlord claims that the tenant left the rental unit unclean for which they claim \$144.00. As well, the landlord claims the tenant caused damage to one of the rental unit's bedroom's ceiling, for which they claim \$250.00 as to its remedy. The tenant testified that they disagreed with the landlord's claims and assessment of damages. The landlord relies on their move out inspection report as evidence that in their assessment the rental unit at the end of the tenancy required additional cleaning.

The tenant provided uncontested testimony that upon attending the move out inspection the landlord had conducted an assessment / inspection on their own and completed the move out inspection report for presentation to the tenant; at which time, the landlord highlighted areas which the parties agreed required additional attention, primarily 2 drawers which still contained some articles. The tenant further testified that the remainder of the time spent with the landlord was utilized discussing an apparent area of water damage in the ceiling of bedroom #2 on the inspection document. Both parties disagreed with the other in respect to the cleanliness of the rental unit at the end of the tenancy. The landlord claims \$144.00 for cleaning.

The landlord claims that the tenant was aware that the kitchen faucet was leaking during the tenancy – resulting in the ceiling damage in the lower bedroom. They testified that the tenant's failure to alert the landlord to the faucet leaking affected the landlord's ability to mitigate the water damage. As a result, the landlord claims they had to repair the water damage for which they claim global remedial costs of \$250.00. The tenant claims the landlord conducted regular inspection of the suite – every 6 months – and that it was available to the landlord to have noted the water damage. The tenant further testified that they were not aware the kitchen faucet area was a source of water leakage, and would have advised the landlord otherwise.

## **Analysis**

**Section 7** of the Act states as follows.

### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or extravagant.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage incurred.

The landlord relies on their determination that the tenant did not leave the rental unit reasonably clean, and knew or ought to have known that faulty kitchen faucets caused the purported loss and damage as reflected in the move out inspection report. The tenant relies on their argument that they left the rental unit reasonably clean and were not aware of a leaking faucet causing the loss or damage claimed.

The landlord, as the applicant, bears the burden of proof. On the face of the evidence, I prefer the un-contradicted testimony of the tenant in finding that the landlord did not perform a move out inspection in accordance with the relevant sections of the *Act* or Regulations. I find the landlord did not perform the inspection *together* with the tenant in accordance with the *Act* and Regulations – preventing the tenant the opportunity to

impart influence on the landlord's resulting assessment of the rental unit. Also, **Section 37** of the Act, in part, states that the tenant must leave the rental unit reasonably clean. I find that the landlord's evidence may well indicate a "need" for cleaning, but the landlord has not proven that the need for cleaning was the result of the tenant leaving the rental unit *unreasonably* clean. As a result of all the above I find that the evidentiary weight of the landlord's inspection report is insufficient to prove their claim for cleaning. None the less, I find agreement between the parties that the tenant failed to ensure that all of their items were removed at the end of the tenancy and that as a result, on balance of probabilities, the landlord was justified in going over areas of the rental unit to ensure its readiness for the next tenant. In this respect, I grant the landlord **\$36.00** for cleaning (representing the landlord's submitted rate of \$18.00 per hour for 2 hours) without leave to reapply.

I accept the tenant's un-contradicted testimony that the landlord performed regular inspections of the rental unit. None the less, I find that the landlord was not aware of a water leakage problem, and there is no evidence to prove that the tenant was aware of a similar problem. I find the landlord has not proven their claim that the actions or conduct of the tenant caused the damage, and on this basis the landlord's claim must fail. Therefore, **I dismiss** this portion of the landlord's claim, without leave to reapply.

By agreement, I find that landlord is owed **\$190.00** for carpet and drapery cleaning, and is awarded **\$36.00** for general cleaning. As the landlord has been partially successful in their claim, I grant the landlord recovery of the filing fee of **\$50.00**, for a total entitlement sum of **\$276.00.**

It must be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed in part, without leave to reapply it is appropriate that I Order the balance of the tenant's security deposit, returned.

***Calculation for Monetary Order***

Landlord's entitlement, inclusive of filing fee	\$276.00
<b>Total Monetary Award to tenant</b>	<b>(\$476.83)</b>

**Conclusion**

I grant the tenant an Order under Section 67 of the Act for the balance due of **\$476.83**.  
If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: December 04, 2012

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Residential Tenancy Branch