



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, MND, MNDC, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of revenue, compensation for damages and an order to keep the security deposit.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on November 2, 2012, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

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

Is the landlord entitled to compensation under section 67 of the *Act* for rent, damages and loss of rent?

### **Background and Evidence**

The landlord testified that the tenancy began in on June 1, 2012 and rent was set at \$750.00 due on the 1st of each month. A security deposit of \$375.00 was paid. The tenancy ended on October 31, 2012.

No copy of the tenancy agreement or move-in and move-out condition inspection reports were in evidence.

The landlord's application was filed on November 2, 2012 and evidence submitted included copies of communications, copies of invoices for advertising in October and November 2012, a copy of an invoice for carpet cleaning completed on November 5, 2012, a copy of an invoice for changing locks, a copy of an estimate for cleaning and repairs of the unit and a document showing phone calls made during November 2012.

The landlord testified that the tenant fell into arrears for \$100.00 in September 2012 and failed to pay \$750.00 rent for the month of October 2012, which is being claimed. The landlord testified that, on October 20, 2012, the tenant told the landlord he was moving out at the end of October 2012. The landlord testified that they immediately commenced advertising the unit but were not successful in re-renting it until December 1, 2012. The landlord is claiming \$750.00 loss of revenue for November 2012.

The landlord submitted a copy of a tenancy agreement with a new renter, verifying that the unit was re-rented on December 1, 2012.

The landlord testified that, when the tenant vacated the unit, it was not left reasonably clean and undamaged. In addition to rental arrears and loss of revenue, the landlord is claiming the following:

- \$134.00 for carpet cleaning
- \$30.00 for changing the locks
- \$80.00 for four hours of cleaning cleaning
- \$40.00 for garbage removal
- \$220.00 for painting and repairs to walls, doors and blinds

### **Analysis**

#### **Rent**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant failed to pay the rent due in September and October 2012 and the landlord is entitled to be compensated \$850.00.

#### **Cleaning and Repairs**

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with the Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that, in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant. 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 Respondent's 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 reasonable steps to minimize the loss or damage.

In this instance, the burden of proof is on the claimant 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.

With respect to the claim for the cost of cleaning, 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.

To determine whether the tenant had complied with section 37 of the Act, I find that this can best be established by comparing the unit's condition as it was when the tenancy began, with the final condition that the unit was left in after the tenancy ended. This would require the submission of move-in and move-out condition inspection reports as outlined in the Residential Tenancy Regulations and in the Act, under sections 23(3) and 35.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report had been completed. I find the failure to comply with the Act with respect to the move-in and move-out condition inspections. I find that the absence of these reports in evidence has hindered the landlord's ability to prove that the tenant should be held accountable for the landlord's claimed costs of cleaning and repairs.

I do, however, accept that the tenant did fail to clean the carpets prior to leaving and likely left the unit in a condition that was not reasonably clean. Accordingly I grant the landlord some compensation in the amount of \$250.00 for the cost of carpet cleaning and general cleaning.

#### Locks

Section 37 of the Act requires the tenant give the landlord all the keys in the possession or control of the tenant at the end of the tenancy, and I accept the landlord's testimony that this did not occur.

However, Section 25 of the Act places the responsibility on the landlord to pay all costs for changing locks at the beginning, or end of each tenancy. For this reason, I find that the landlord is not entitled to be reimbursed for the costs associated with changing the locks on the rental suite and this portion of the claim must, therefore, be dismissed.

### Loss of Revenue

In the case before me, I find that the tenant did violate the agreement by ending the tenancy without giving one month written notice as required under section 45 of the Act. I accept that the landlord did incur a loss of \$750.00 revenue for the month of November as a result. I further find that the landlord did make a reasonable effort to mitigate the loss by trying to find a replacement tenant by advertising and showing the unit and finally securing a suitable tenant for December. I find that the landlord is entitled to be compensated \$750.00 loss for November 2012.

Given the above, I find that the landlord is entitled to be compensated \$1,900.00, comprised of \$850.00 for rental arrears, \$750.00 loss of rent for November 2012, \$250.00 for cleaning and carpet cleaning and the \$50.00 cost of this application. I order that the landlord retain the \$375.00 being held as a security deposit in partial satisfaction of the claim leaving a remainder of \$1,525.00 still outstanding and owed to the landlord.

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$1,525.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is partly successful in the application and is granted a monetary order and an order to retain the tenant's security deposit in partial compensation for the 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: January 31, 2013

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Residential Tenancy Branch

