



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 1, 2012, the tenant did not attend. The landlord's agent testified to the documents being served on that date and in that manner, and provided a registration number provided by Canada Post for that mailing, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*. The telephone line remained open and the call was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2007 and ended on October 31, 2010. Rent in the amount of \$1,110.00 per month was originally payable under the tenancy agreement, which was increased during the tenancy to \$1,231.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$555.00 and no pet damage deposit was collected.

The landlord's agent further testified that the tenant moved out of the rental unit on poor terms with the landlord; the landlord had obtained and served an Order of Possession on the tenant which was obtained due to repeated late rent. The tenant consequently did not provide a forwarding address to the landlord. The landlord found an address for the tenant on Canada 411 which is a website for Telus that provides phone numbers and addresses. The phone number on the website for the tenant was the same phone number that the landlord had on file from 2008. The address obtained from the website is the address that the landlord served the tenant at with the Landlord's Application for Dispute Resolution and notice of hearing documents. A copy of the Order of Possession was provided for this hearing, and it is dated October 15, 2010 with an effective date of vacancy of October 31, 2010.

The landlord's agent further testified that a move-in condition inspection report was completed on September 18, 2007. The landlord's agent left the tenant a message to call the landlord to arrange a move-out condition inspection but the tenant did not return the call. The landlord's agent went to the rental unit on the Thursday prior to October 31, 2010 and the tenant was there. The tenant promised to call the landlord's agent to set up a time and date for the inspection, but the tenant did not call. The landlord's agent, along with a property manager and maintenance assistant, completed the move-out condition inspection without the tenant present on November 2, 2010, and a copy of the reports for move-in and move-out were provided for this hearing, and both inspections are contained in the same form. The keys were located outside the rental unit and a neighbour advised the landlord's agent that the tenant was gone.

The rental unit was left with garbage in every room and the landlord's agent took photographs on November 2, 2010, and provided several photographs for this hearing. The photographs show numerous items left behind, including clothing, food in the cupboards, wall hangings left on the floor, and generally an unclean rental unit both inside and outside.

The landlord claims \$627.87 for painting a second coat of paint on the walls in the rental unit. The landlord's agent testified that the tenant had painted one of the rooms red without using any primer, and the tenant was advised that if the tenant wanted to paint, the tenant would be permitted to do so, but if no primer was used, the tenant would have to pay for a second coat or re-paint before vacating the rental unit. The tenant did not re-paint and did not use a primer. A copy of an invoice has been provided.

The landlord also claims \$952.00 for cleaning the rental unit and provided an invoice to substantiate that amount. The landlord also testified that the photographs which show that the rental unit is in need of thorough cleaning are verified by the move-in and move-out condition inspection reports.

The landlord also claims \$772.71 for drapery replacement. The drapes in the rental unit were not new at the commencement of this tenancy, and some wear and tear is to be expected, however some of the drapes were missing at the end of the tenancy. The landlord has provided an invoice in that amount for 10 sets of drapes, however the move-in and move-out condition inspection only identifies 4 sets of drapes. The landlord's agent testified that the photographs also show windows in the living room and dining room although window coverings are not mentioned in the inspection reports.

The landlord also claims \$146.71 for cleaning the carpets at the end of the tenancy and has provided an invoice to substantiate that amount.

The landlord also claims \$73.92 for re-keying locks. The landlord's agent testified that not all of the keys were left by the tenant, and the key for the storage room door was not left. The landlord's agent paid \$194.00 to have a locksmith attend the rental complex, and testified that of that amount, only \$66.00 plus HST is for this rental unit; the landlord's agent had the locksmith perform other work while at the rental complex. The invoice provided by the landlord states, "Qty 3; Recode lock cylinders to MK system; \$66.00; Keys NC."

The landlord also claims \$106.68 for replacement of a window that was cracked during the tenancy, although the damage is not mentioned in either of the inspection reports.

The landlord's agent also testified that the tenant has not provided the landlord with a forwarding address in writing and it's been more than a year since the tenancy ended. The landlord has not applied for an order permitting the landlord to keep all or part of the security deposit because the *Residential Tenancy Act* provides that a landlord need not return it if the tenant has not provided a forwarding address within one year.

### Analysis

Firstly, the landlord's agent testified that the tenant moved out of the rental unit on October 31, 2010 and the Landlord's Application for Dispute Resolution was filed on October 30, 2012, and I find that the landlord has filed the application within the time permitted under the *Residential Tenancy Act*.

The *Residential Tenancy Act* requires a tenant to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. The *Act* also requires a landlord to provide the tenant with at least 2 opportunities to conduct the move-out condition inspection report, and if the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is

extinguished. In this case, the landlord has not applied for an order to keep the security deposit.

The regulations to the *Residential Tenancy Act* state that the inspection reports are evidence of the condition of the rental unit at the beginning and at the end of the tenancy. Also, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have reviewed the move-in and move-out condition inspection reports as well as the photographs provided by the landlord. The landlord testified that the photographs were taken on November 2, 2010, being the date that the move-out condition inspection report was completed. With respect to the landlord's application for general cleaning of the rental unit and carpet cleaning, I find that the photographs are consistent with the move-out condition inspection report, and I find that the landlord has established a monetary claim as against the tenant for general cleaning in the amount of \$952.00 as well as carpet cleaning in the amount of \$146.71.

With respect to the landlord's claim for drapery replacement, the landlord's agent testified that the drapes in the rental unit were not new at the commencement of the tenancy. The landlord also testified that there were 10 sets of drapes even though the inspection reports only identify 4 sets. The invoice provided states that 10 sets installed is a cost of \$490.00, and includes costs for 10 pieces of tracking for \$139.92 and \$60.00 to install a track. The landlord's agent did not provide any testimony about requiring tracking and installation, nor do the inspection reports show that tracks were broken or missing. Using the invoice, which shows that drapes are \$49.00 per set, 4 sets would cost \$196.00. I also refer to Residential Tenancy Branch Policy Guideline #40 which sets out the expected life of certain elements of a rental unit, and sets the useful life of drapes at 10 years. The landlord's agent testified that some wear and tear exists because the drapes were not new, but didn't provide any evidence or testimony as to the age of the drapes. In the circumstances, I find that the landlord has failed to establish that the tenant ought to pay for drapes that were not new and not justified on the move-in or move-out condition inspection reports. Therefore, the landlord's application for replacing drapes must be dismissed.

I also note that the inspection reports do not mention a cracked or broken window. The regulations state that the reports are evidence of the condition of the rental unit. The photograph provided by the landlord does not show a crack or a broken window. Where the inspection reports are silent, and no other evidence is available, the landlord has not satisfied the test for damages.

With respect to re-keying the locks to the rental unit and the storage unit, the landlord's agent testified that not all keys had been left behind by the tenant, and that the storage door key was not left behind. The inspection report shows that 1 access/laundry key and 2 unit keys were provided to the tenant at the beginning of the tenancy, but the move-out portion has been left blank and there is no mention in the reports at all about a storage room key. The landlord's agent testified that only a portion of the invoice provided is relevant to this rental unit, and the amount claimed is \$66.00 plus HST. The invoice shows that cost as being a cost to recode 3 lock cylinders and there was no charge to the landlord for keys. I am not clear on what keys the landlord actually received from the tenant. If the tenant was provided with 1 access/laundry key and 2 unit keys at the commencement of the tenancy, and the tenant failed to leave behind the storage room key, what locks were re-coded, and why would the landlord require 3 locks to be re-coded? I am also unclear on which keys were returned or not returned by the tenant. Therefore, I cannot be satisfied that the landlord has established the claim.

With respect to the landlord's claim for re-painting the unit, I have reviewed the inspection reports and note that the rental unit was newly painted prior to the commencement of this tenancy. Although the landlord has not provided any evidence to substantiate the testimony that the tenant was told that re-painting the unit was permitted as long as primer was used, nor did the landlord provide any evidence to substantiate whether or not the tenant used primer, the move-in/out condition inspection reports and the photographs are evidence of the landlord's claim. I find that the landlord has established a claim in the amount of \$627.87.

In summary, I find that the landlord has established a monetary claim as against the tenant for general cleaning in the amount of \$952.00, for carpet cleaning in the amount of \$146.71, and \$627.87 for painting. Since the landlord has been substantially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The Landlord's Application for Dispute Resolution does not make a claim against the security deposit, however the details section of the application shows the amounts claimed less the security deposit and a \$3.00 credit. The landlord testified that the tenant had overpaid rent by \$3.00 in a previous month, and that the details section of the application shows a greater amount of security deposit paid because the landlord

has added accrued interest. During the hearing, the landlord testified that the tenant has not provided the landlord with a forwarding address, and more than a year has passed since the tenancy ended. The *Act* states that a Landlord may retain the deposit if a forwarding address is not provided:

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore, I make no orders with respect to the security deposit.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,776.58.

This order is final and binding on the parties and may be enforced.

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: February 6, 2013

---

Residential Tenancy Branch

