



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for garbage removal and new carpeting.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on March 5, 2013, 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 damages?

### **Background and Evidence**

The landlord testified that the tenancy began on April 15, 2012 and the rent was \$1,000.00.

The tenancy was ended after a previous hearing held on February 15, 2013, in which the landlord was granted an Order of Possession and a monetary order for rental arrears. The landlord was also ordered to keep the tenant's security deposit in partial satisfaction of that debt.

The landlord testified that the tenant moved out on February 16, 2013 and the landlord made a verbal request to conduct a move-out condition inspection at that time.

The landlord testified that a "Notice of Final Opportunity to Schedule a Condition Inspection" proposed for February 21, 2013, was emailed to the tenant. No copy of the email was in evidence. According to the landlord, no response to his email was ever received from the tenant.

The landlord stated that the tenant had left the 750 square-foot rental unit in an unclean and damaged condition. The landlord testified that the unit required 16 hours of labour

to remove garbage and another 16 hours to clean the unit, for which the landlord is claiming \$30.00 per hour. The claim for cleaning and garbage removal totals \$960.00.

The landlord testified that the carpet was urine-soaked from the tenant's cats. The landlord testified that the carpeting was 2.5 years old, but a cleaner told him that it could not be restored through cleaning. The landlord is claiming \$1,386.00 for new flooring.

The landlord did not submit copies of either the move-in or move-out condition inspection reports. However, the landlord submitted photographs of the unit at the end of the tenancy. The landlord also provided an estimate for the cost of professional cleaning and garbage removal and an estimate for replacement flooring.

### **Analysis**

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 this 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. 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

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 or not 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 of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Conducting move-in and move out condition inspections and documenting the findings on reports is a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

The Act allows a landlord to conduct the move-out condition inspection report in the tenant's absence if the landlord had properly served the tenant with Notices on the accepted form to schedule the inspection, giving the tenant two opportunities to negotiate a time.

I find that, while the landlord submitted documents that initially appeared to indicate that he served a Notice of Final Opportunity to Schedule a Condition Inspection on February 16, 2013 and February 21, 2013, the testimony revealed that the first attempt to do the move-out inspection on February 16, 2013 was verbal and the second Notice for a February 21, 2013 inspection, was apparently served by email.

Moreover, the landlord did not submit a copy of the move-in condition inspection report, nor a copy of the move-out condition inspection report, that was, or should have been, conducted in the tenant's absence.

I find that the landlord's failure to comply with the Act and the absence of these condition inspection reports impacted the landlord's ability to prove that the test for damages has been met and that the tenant should be held accountable for costs of cleaning or repairs.

However, the landlord did submit photographs that clearly indicate the unit was not left in a reasonably clean condition at the end of the tenancy and I find that cleaning and garbage removal was necessary for the unit to meet the "reasonably clean" standard required under the Act.

Because the carpet was apparently removed, I find that the cleaning of this unit would be restricted to a general clean-up and trash removal. I find that the landlord is entitled to be compensated for 14 hours of cleaning and trash removal at a rate of \$20.00 per hour for total compensation of \$280.00.

With respect to the carpeting, I find that the landlord was not able to provide sufficient evidence to prove that cleaning the carpets and disinfecting them as not a viable option.

Therefore I find that element 4 of the test for damages was not satisfied. Moreover, although the landlord did provide a written estimate showing the cost to purchase and install new laminate flooring, no receipts were submitted to confirm that the landlord had genuinely incurred expenses in completing this work. I therefore find that element 2 of the test for damages has not been met. For this reason, I find that the claim for the cost of new carpeting was not sufficiently proven to justify the claim and it must be dismissed.

I find that the landlord is entitled to total compensation for cleaning and repairs in the amount of \$280.00 plus the \$50.00 cost of the application, for a total monetary award of \$330.00.

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 \$330.00 comprised of \$330.00 for cleaning and garbage removal and the \$50.00 cost of this application. 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 for cleaning and garbage removal.

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: May 27, 2013

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Residential Tenancy Branch

