



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

## **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, utilities, disposal costs and repairs. The landlord was seeking to retain the security deposit in satisfaction of the claim.

Despite being served by registered mail, sent on July 18, 2013, as confirmed by the Canada Post tracking number, the respondent tenant did not appear and the hearing proceeded in the tenant's absence.

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

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

## **Background and Evidence**

The landlord testified that the tenancy began July 1, 2012 and the rent was \$1,038.00 per month. A security deposit of \$500.00 was paid. A move-in condition inspection report was completed and signed by both parties. A copy of the report is in evidence.

The tenancy ended through an Order of Possession awarded, on July 5, 2013, based on a 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant vacated on July 31, 2013 pursuant to a writ from Supreme Court of British Columbia and through the services of a bailiff. No move-out condition inspection report was completed.

The original application was claiming \$3,477.00. However the landlord amended the application to a claim for \$5,000.00. No tenant ledger was submitted, but the landlord testified that the tenant owes rent of \$400.00 for the month of June 2013 and \$1,038.00 for July 2013, for total of arrears \$1,438.00, which is being claimed.

The landlord testified that the tenant also failed to pay utility charges. The landlord did not submit a copy of the tenancy agreement to confirm that the tenant is responsible for

utilities under the agreement. However, the landlord submitted a copy of an invoice from the utility company, for an account in the landlord's name, showing that there is a balance owed of \$19.41 for the period from August 1, 2013 to September 3, 2013.

The landlord testified that the tenant left the rental unit damaged and the landlord is claiming compensation for the repairs. The damage is not recorded on a move-out condition inspection report. The landlord stated that attempts were made to schedule a move out inspection, but the tenant did not cooperate, and no report was completed in the tenant's absence.

The landlord did not submit a detailed summary listing the specific claims for the repairs, but gave verbal testimony about alleged damage to the suite. The landlord provided numerous receipts for various purchases from retail stores and contractors that the landlord testified were to deal with repairs and services for damage caused by the tenant.

In addition to the damage to the suite, the landlord is claiming \$162.94 compensation for the cost of cleaning the carpets. The landlord is claiming cleaning costs for the suite of \$165.00 supported by an invoice dated August 6, 2013 from an individual and an additional \$100.00 supported by a receipt to the landlord dated August 8, 2013.

The landlord is claiming reimbursement for the bailiff fees and submitted an invoice for \$335.83 into evidence to support this amount.

The landlord is also claiming loss of rent for the months of August and September 2013 in the amount of \$2,076.00 due to an inability to restore the unit to re-rentable condition due to the time it took to complete the repairs. The landlord provided verbal testimony with respect to this claim for the two-month period following the tenancy.

The landlord's application was amended from the original claim of \$3,477.00 to a claim of \$5,000.00 and the landlord testified that the arrears, losses and repairs actually exceeded this value.

### **Analysis**

With respect to \$1,438.00, rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement. In this instance, I find that the tenant did not pay the rent when it was due. Accordingly, I find that the landlord is entitled to \$1,438.00 for rental arrears.

In regard to the landlord's claim for utilities, I find that section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement.

Determining what the parties had agreed upon with payment of utilities is founded upon specific terms that were mutually agreed-upon in the tenancy agreement between this landlord and this tenant. I find that, in the absence of a copy of the written tenancy agreement, I am unable to determine whether these utility arrears relate to services that are the responsibility of the tenant to pay for by contract.

Accordingly, I find that the landlord's claim for utility arrears is not sufficiently proven and must therefore be dismissed.

With respect to the landlord's other claims for cleaning, repairs and loss of rent, it is important to note that in a claim for loss under the Act, the party making the claim 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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement Act.

Section 37(2) of the Act states that, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

I find that the landlord is alleging that the tenant left the unit in an unclean and damaged state. With respect to complying with section 37 of the Act, I find the tenant's role in causing damage can be established by comparing the before condition of the unit with the condition it was left in, after the tenancy ended, through the submission of properly completed condition inspection reports conducted jointly by both parties. In this instance I accept that section 23(1) of the Act was followed and the landlord and tenant both participated in, and signed, the move-in inspection.

However, I find that the tenant failed to participate in the move-out condition inspection process. The Act does permit a landlord to complete the move-out inspection without the tenant provided the landlord follows the mandatory steps described below.

Section 35 of the Act states that, in arranging the move-out inspection, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted. Section 17 of the Regulation states that:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if (a) the landlord has complied with subsection (3), and, (b) the tenant does not participate on either occasion.

Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) *[2 opportunities for inspection]*,

I find that during the final month of the tenancy there was no evidence presented by the landlord to indicate that the landlord had ever attempted to follow the Act with respect to scheduling the inspection and completing the move-out condition inspection report without the tenant's participation. I find that there is no evidence that the landlord had ever offered the tenant two opportunities to participate. I also find that the landlord did not submit verification that the landlord had offered the tenant a final opportunity to participate in the move out condition Inspection on the approved form.

The evidence submitted by the landlord shows that the unit was in need of cleaning and garbage removal. For this reason I find that the landlord is entitled to cleaning costs of \$165.00 to compensate for the first cleaner billing and \$162.74 for the carpet cleaning. I also grant disposal costs of \$60.00.

In regard to the cost of engaging the bailiff to remove the tenant, I find that the landlord is entitled to costs of \$335.83.

In regard to the repairs, I find that some of the photos confirm that certain areas of the unit were apparently damaged. However, because the landlord has neglected to submit a completed move-out condition inspection report and also did not provide a detailed breakdown of each repair and the corresponding costs, I find that the landlord's remaining monetary claims, including the claims for repairs and two month loss of rent, do not sufficiently satisfy elements 1 and 2 of the test for damages and I find that, because the landlord has failed to meet the burden of proof to justify these claims, they must be dismissed.

Accordingly I find the landlord is entitled to compensation of \$2,241.57, comprised of rental arrears of \$1,468.00, cleaning costs of \$165.00, carpet cleaning costs of \$162.74, disposal costs of \$60.00, bailiff fees of \$335.83 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$500.00 security deposit in partial satisfaction of the claim, leaving \$1,741.57 still outstanding.

I hereby grant a monetary order in favour of the landlord for \$1,741.57. This order must be served on the tenant and may be enforced in Small Claims Court if necessary.

### **Conclusion**

The landlord's application is partly successful and the landlord is granted a monetary order for rent, damages and the cost of the application.

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: October 30, 2013

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Residential Tenancy Branch

