



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

## **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of revenue, repairs and cleaning and to justify keeping the security deposit in partial satisfaction of the claim.

The application was also to deal with the tenant's claim for the return of the security deposit not refunded by the landlord.

The landlords and an advocate appearing on behalf of the tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

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

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

Is the tenant entitled to a refund of the security deposit?

## **Preliminary Issues**

The tenant's advocate stated that they did not receive the photos submitted to Residential Tenancy Branch by the landlord.

The landlord testified that the evidence was sent by registered mail on October 1, 2013 and provided receipts from Canada Post for two packages sent on that date.

However, there is no way to confirm the actual contents of the registered mail. Other evidentiary material was confirmed by the tenant's advocate as having been received.

Accordingly, I decline to consider the photographic evidence submitted by the landlord. Other evidence and testimony will be considered.

### **Background**

The tenancy began approximately 4 and a half years ago. Current rent was \$2,140.00 due on the 15<sup>th</sup> day of each month. A security deposit of \$1,050.00 was paid. A move-in condition inspection report was completed and showed a single signature that was not decipherable. The move-in and move-out condition inspection report forms utilized by this landlord are not compliant with the requirements provided in the regulations, which have specific sections where the parties must sign and are identified as being the signature of the landlord or the tenant. In this case, it is not clear whether the landlord or the tenant had signed the move-in report.

The tenant gave written Notice on May 23, 2013 to vacate on June 15, 2013 and the tenancy ended on June 15, 2013. No written forwarding address was provided to the landlord by the tenant. The landlord testified that the tenant was notified to arrange the move-out condition inspection, but did not cooperate and the move out inspection was therefore completed in the tenant's absence.

The landlord testified that the tenant paid the rent due on May 15, 2013 to cover the period from May 15 to June 14, 2013. The landlord pointed out that the tenant did not give the required one-month Notice under the Act and, because of the clean-up process and repairs, the landlord was unable to re-rent the unit for the month from June 15 2013 to July 14, 2013, and incurred a loss of \$2,140.00, which is being claimed. The landlord testified that the unit is still vacant.

According to the landlord, the unit was left in a state that required significant cleaning and repairs. The landlord testified that the tenant should compensate them for the following costs:

- \$236.25 for the cost of garbage disposal
- \$606.00 for the cost of replacing the carpet
- \$200.00 estimated cost for repairs to the railing and door frames
- \$50.00 cost of filing for dispute resolution
- \$100.00 for the cost of preparing for the hearing.

The landlord is claiming \$3,332.63.

The landlord testified that the carpeting was approximately 15 years old, but was in excellent condition when the tenant arrived in 2008. The landlord described damage to the door frame and railings that was not present at the start of the tenancy.

The tenant's advocate disputed the claim for loss of rent for the period from June 15 to July 14, 2013. The advocate pointed out that the parties had discussed permitting the tenant to vacate without being responsible for the half a month rent for the first part of July 2013, as confirmed by email communications between the parties.

The advocate stated that the tenant was also disputing the alleged damages and the cost of repairs.

### **Analysis:**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

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

In this instance, the burden of proof was on the landlord, 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.

In regard to cleaning and repairs, 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**. (my emphasis).

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and I find that in this instance a move-in condition inspection report and a move-out condition inspection report were completed. However, I find that the format utilized by

the landlord did not feature all of the required elements listed in section 20 of the Residential Tenancy Regulations, including a space where the tenant could indicate whether they agreed or disagreed with the notations.

I find that the landlord is required to prove that the rental unit was not left in a reasonably clean state. I find that the inclusion of valid move-in and move-out condition inspection reports would suffice to verify the before and after condition of the rental premises. I find that, utilizing the incorrect format may adversely affect the evidentiary weight of the report.

With respect to the landlord's claim for the replacement carpeting, I accept the allegation that significant damage was caused by the tenant. However, I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position he or she would be in, had the damage not occurred.

Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference to Residential Tenancy Policy Guideline 40 was made to accurately assess the normal useful life of a particular item or finish would be. In regard to carpet, the "*Useful Life of Building Elements*" chart shows that carpets are expected to last 10 years. I find that this particular carpeting exceeded 10 years.

For this reason, I find that the tenant cannot be held responsible to reimburse the landlord for the costs of removal, disposal, and replacement of the carpeting, nor for losses attributable to the time that this work took in delaying the re-rental of the unit.

I therefore find that the landlord's claim for \$606.00 for the cost of replacing the carpet must be dismissed.

With respect to the loss of revenue, I find that the tenant did violate the Act by giving short notice to vacate contrary to section 45 of the Act. I find that this violation likely contributed, in part, to the landlord's inability to find a new renter resulting in a loss of rent. However, I also find that landlord's carpet renovation likely contributed to some extent to the failure to find a replacement tenant, because the unit was apparently under renovation for a period of time after the tenant had vacated.

Accordingly, I find that the landlord is entitled to be compensated a portion of the loss of revenue caused by the tenant's late notice, in the amount of \$1,070.00.

In regard to the \$236.25 claimed for garbage disposal, I find that a portion of this would be the responsibility of the tenant, as personal items were left in the unit and had to be

removed. Because it is not clear whether some of the disposal costs being claimed pertained to the carpet removal, I therefore find that the landlord is entitled to a portion of the disposal costs in the amount of \$120.00 for removing the tenant's garbage.

In regard to the claim for \$200.00 estimated cost for repairs to the railing and door frames, I find that this claim fails to satisfy element 3 of the test for damages as the landlord has not furnished sufficient evidence that this expense was genuinely incurred.

In regard to the \$100.00 compensation for the cost of preparing for the hearing, I find that, with the exception of the cost of filing the application, the landlord's claims for reimbursement are not compensable expenditures covered under any provision of the Act and must therefore be dismissed. However, I do find that the landlord is entitled to be reimbursed the \$50.00 cost of the application.

Given the above, I find that the landlord is entitled to monetary compensation of \$1,240.00, comprised of \$1,070.00 loss of rent, \$120.00 for garbage disposal and the \$50.00 cost of the application.

I find that the tenant would be credited with \$1,063.81 security deposit and Interest, leaving a balance owed to the landlord in the amount of \$176.19.

I hereby issue a monetary order in favour of the landlord for \$176.19. This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are dismissed without leave.

### **Conclusion**

The landlord is partially successful in the application and is granted a monetary order for loss of rent and damages.

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 15, 2013

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Residential Tenancy Branch

