



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UPPER COLLEGE HEIGHTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

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

Both parties 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 affirmed testimony and relevant evidence that was properly served.

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

Is the landlord entitled to monetary compensation under section 67 of the *Act* for loss of revenue, cleaning and damage.

### **Background**

The tenancy began on May 1, 2012 and rent was \$990.00. A security deposit of \$495.00 was paid. The tenancy ended on April 20, 2014. A copy of the tenancy agreement was in evidence.

The landlord testified the tenant gave her one month notice a day late and therefore was not in compliance with the *Act*. The landlord submitted a copy of the tenant's written Notice to Vacate dated April 1, 2014 effective April 21, 2014. The landlord acknowledged that, the tenant had paid rent for the entire month of April but vacated on April 21.

According to the landlord the fact that the tenant gave the Notice one day late caused the landlord to lose potential rent for the month of May 2014 and the landlord is claiming

compensation of \$1,800.00. The landlord testified that they commenced advertising immediately, but did not submit evidence to confirm this claim.

The tenant testified that the landlord had the entire month of April 2014 to market the rental unit and this included 9 days during which the unit would be vacant between April 21, 2014 and April 30, 2014. The tenant testified that the landlord did not take reasonable steps to re-rent the unit for May 2014.

The landlord testified that the premises were not left reasonably clean and in good repair. The landlord claims that they incurred costs of:

- \$455.00 for "Damages and Repairs"
- \$550.00 for cleaning, including \$250.00 to refinish the waxed floors
- \$73.50 for carpet cleaning

The landlord submitted a copy of the move-in and move-out condition inspection report. The move-out inspection was completed on April 20, 2014.

The tenant stated that she initialed the move-out inspection report acknowledging her presence, but disagreed with the contents. The tenant pointed out that the form did not have any space where a tenant could possibly note that they disagreed with the landlord's notations.

To support the monetary claim, the landlord submitted a receipt for carpet cleaning confirming charges of \$73.50 and a one-page hand-written sheet listing the repairs and disposal costs with amounts beside various items. The landlord stated that they charge "flat rates" for certain items and but not provide receipts or a breakdown of materials or labour.

The tenant disputed the alleged repairs and the associated charges put forth by the landlord. The tenant stated that the condition issues pointed out by the landlord were due primarily to normal wear and tear due to the vintage nature of the well-used finishes in the unit and the two-year duration of the tenancy. The tenant stated that the landlord's charges have no valid basis. The tenant also disputed that the garbage being hauled away was all from her unit.

The landlord did provide a receipt for the cost of cleaning the unit, at a cost of \$500.00 comprised of a pre-printed list of all rooms and tasks, beside which were boxes for the cleaner to place checkmarks indicating what cleaning was done in each room. The form shows that the cleaner's charges represented cleaning everything in the unit.

The tenant disputed the landlord's claim that the unit required the amount of cleaning claimed and stated that the unit was left in a reasonably clean condition.

## **Analysis:**

### **Late Fee**

With respect to the landlord's claim for the \$25.00 late fee for May, the month after the tenant vacated the unit, I find that the late fee is based on a term of the tenancy agreement. Once a tenancy is terminated by either party, the applicable terms contained in the contract, including late fees, would no longer be in effect or enforceable on the party. As the tenancy agreement was ended by the tenant effective April 21, 2014, I find that the late-fee term cannot be enforced for rent applicable to the month of May. Accordingly, I find that this portion of the landlord's claim must be dismissed.

### **Loss of Revenue**

With respect to an Applicant's right to claim damages from another party, I find that 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 is 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.

I find that the tenant did give her written Notice to End the tenancy one day late and thereby was not in compliance with the Act. With respect to the landlord's claim that they incurred a loss of revenue as a result of the tenant's violation, I find that, to satisfy element 4 of the test for damages, the landlord should be prepared to prove that they took reasonable steps to advertise and show the unit to potential renters during the period from April 1, 2014, after the tenant gave notice, to the end of April 2014.

In this regard, I find that the landlord has not provided adequate evidence to confirm that they complied with section 7(2) of the Act. Accordingly, I find that the landlord's claim for loss of revenue for the month of May 2014 must be dismissed.

### Claims for Cleaning and Repairs

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. (my emphasis)

Section 37(2) of the Act also 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)

I find that the "before and after" cleanliness and condition of a rental unit can be accurately determined by valid move-in and move-out condition inspection reports completed in accordance with the Residential Tenancy Regulations . Section 20(1) of the Residential Tenancy Regulation states that a condition inspection report completed under section 23 or 35 of the Act must contain standard information including the following:

*(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*

*(k) the following statement, to be completed by the tenant:*

*I, .....*

*Tenant's name*

*[ ] agree that this report fairly represents the condition of the rental unit.*

*[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*

*.....*  
*.....*  
*.....*

With respect to the move-in and move-out condition inspection reports submitted by the landlord, I find that the form utilized by the landlord does not comply with 20(1)(j) and 20(1)(k) as it does not feature the two choices that are mandatory to include under section 20(1)(k), I therefore accept the tenant's testimony that there was inadequate opportunity for the tenant to express any disagreement with the report on the form used. I find that this fact affects the evidentiary weight of the document that the landlord is relying upon to support the claims.

In addition, I find that the landlord's list of charges for various repairs are not sufficiently detailed nor supported with proof of the actual costs. Moreover, I accept the testimony given by both the tenant and the landlord that some of the finishes in the unit are older and have exhausted the average useful life as defined in Policy Guideline 40, "*Useful Life of Building Elements*". I accept the tenant's position that the interior finishes have, on a balance of probabilities, been affected by previous tenancies and normal wear and tear during this two-year tenancy.

For the reasons above, I find that the landlord's claims for the cost of repairs are not sufficiently verified by the evidence presented.

In regard to the cleaning costs, I do accept the landlord's evidence that the rental unit required some additional cleaning to bring it up to the "*reasonably clean*" standard imposed by section 37 of the Act and I find that the landlord is entitled to \$10.00 for the cleaning costs and \$73.50 for the carpet cleaning costs.

Accordingly, I find that the landlord is entitled to total monetary compensation of \$173.50 for cleaning and carpet cleaning costs.

I order that the landlord retain this amount from the tenant's security deposit of \$495.00 in full satisfaction of the landlord's monetary claim, leaving a balance in favour of the tenant of \$321.50.

I hereby grant a monetary order to the tenant for \$321.50. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's claim is dismissed without leave.

### **Conclusion**

The landlord is partly successful in the claim and is granted an order to retain part of the tenant's security deposit in full satisfaction of the claim. And the tenant is granted a monetary order for the remainder to the security deposit.

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: September 04, 2014

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Residential Tenancy Branch

