



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND, MNSD, FF

### **Introduction**

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of any monetary claim.

Both parties participated in the hearing with their submissions and testimony during the hearing. The tenant acknowledged receiving the landlord's application for dispute resolution outlining their claim, along with a copy of the move in condition inspection report and the RTB Fact Sheet. The landlord acknowledged they did not provide the tenant with any other document evidence in support of their claim. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

### **Background and Evidence**

The undisputed relevant testimony in this matter is that the tenancy started in March 2013 and has since ended. The landlord currently holds the security and pet damage deposits in trust – in the sum amount of \$1300.00.

The landlord claims that the tenant caused damage to the rental unit beyond reasonable wear and tear. The tenant testified that despite mutually inspecting the unit at the end of the tenancy the parties did not agree as to the landlord's claims of deficiencies or administration of the deposits held by the landlord. The parties agree that after the end of the tenancy the tenant did not receive a copy of a *move out* condition inspection report from the landlord. The tenant testified that to date they have not received any document evidence from the landlord to support their monetary claims and disagreed with the landlord's claims.

The parties were permitted to discuss their dispute with a view to resolving it, to no avail.

### **Analysis**

**Section 7** of the Act states as follows.

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence to the tenant and this hearing that can verify the monetary amount of the damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage incurred. Most importantly, the landlord must provide the above evidence to the tenant so as they are equipped to respond to the claims.

The landlord bears the burden of proof. In the absence of document evidence for the claimed damage and in the absence of providing this evidence to the tenant I find the landlord has not

met the test for damages. The landlord has not provided evidence to support their claim that the tenant in this matter caused damage to the rental unit. As a result, **I dismiss** the landlord's application in its entirety, without leave to reapply.

It must be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the tenant's dual deposits in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the tenant's deposits.

#### **Conclusion**

The landlord's claim **is dismissed**, without leave to reapply.

**I Order** the landlord to return the security deposit and pet damage deposit to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act [*service of documents*] or give the deposit personally to the tenant.

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$1300.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: March 09, 2015

---

Residential Tenancy Branch

