



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's security deposit and a monetary order for utilities, cleaning, repairs and painting.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on November 15, 2012, neither respondent appeared and the hearing was therefore conducted in the tenant's absence.

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

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

### **Background and Evidence**

The landlord testified that the tenancy began on August 1, 2005 and ended on October 31, 2012. A security deposit of \$360.00 was paid and the current rent was \$782.00.

The landlord submitted into evidence copies of photos, invoices, a copy of the tenancy agreement and a list of expenditures being claimed.

The landlord also submitted signed copies of the move-in and move-out condition inspection reports, which verified that the tenant agreed to pay for \$36.70 for utilities owed, \$120.00 for general cleaning, \$106.40 for carpet cleaning, \$60.00 for cleaning the windows and \$300.00 for a portion of the cost to replace the countertops. In the move out inspection report, the tenant had stated that they disagreed with the landlord's claims for painting, closet door repairs and replacement draperies.

The landlord testified that, although there was an expectation that the unit would need to be painted at the end of the tenancy because the paint finishes in the unit were approximately 8 years old, they had incurred extra costs due to the fact that the tenant had violated the tenancy agreement by painting the unit in a saturated colour without

the landlord's permission during the tenancy. The landlord testified that the tenant was required, under the tenancy agreement, to only paint the walls in a landlord-approved colour and, as a result of the shade of paint chosen by the tenant, the walls all needed to be painted with an extra coat of primer. The landlord is claiming \$649.60. The landlord referred to photos, receipts and invoices in evidence to support the claim.

The landlord testified that the tenant had damaged a bi-fold door and the repairs cost \$48.00, which is being claimed. The landlord testified that the door was original to the 40-year-old building. A receipt and photos were in evidence.

The landlord testified that the tenant's cats ruined the draperies and they had to be replaced at a cost of over \$900.00, as evidence by the receipt and photos submitted by the landlord. The landlord acknowledged that the window coverings were originally purchased in 1998 and the landlord is only claiming \$100.00 towards the cost of the new draperies

### **Analysis**

In regard to the claims that were accepted by the tenant in the move out inspection report, I find that the landlord is entitled to \$623.10, including \$36.70 for utilities, \$120.00 for general cleaning, \$106.40 for carpet cleaning, \$60.00 for window cleaning and \$300.00 for a portion of the cost to replace the countertops.

With respect to the disputed claims for compensation, 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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act to 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 or a contravention of the Act on the part of the respondent.

In regard to the monetary claim for painting the unit, I find that, during the tenancy, the tenant had painted some of the walls in a colour that was not approved by the landlord. I also accept that the landlord incurred extra costs to cover the intense colour of the walls painted 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 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.

With respect to the replacement value, I find that reference can be made to Residential Tenancy Policy Guideline 40 in order to accurately assess what the normal useful life of a particular item or finish in the home would be. I find that the Guideline sets the average useful life of an interior paint finish at 4 years.

I find that this unit had originally been painted approximately 8 years ago. Given that the landlord was spared the cost of repainting the unit after 4 years during which the tenant had occupied the unit, I find that the cost of an extra coat of primer at the end of the tenancy is less than the expenditure that would otherwise have occurred, had the landlord paid the costs of painting the unit four years into the tenancy.

Accordingly, I find that there was no net loss incurred by the landlord for the extra coat in painting the unit at the end of the tenancy. Therefore, I find that the portion of the landlord's claim relating to the preparation and painting of the walls must be dismissed.

In regard to the landlord's claims of \$48.00 for the damaged closet doors, I find that the average useful life of doors, set in the Regulation, is 20 years. Because the doors in question were approximately 40 years old, I find that they had likely exceeded their average useful life.

With respect to the landlord's claim of \$100.00 for a portion of the cost of new draperies, I find that average useful life of window coverings is set, by the Regulations, at 10 years. Because the draperies in question were approximately 14 years old, I find that they had exceeded their average useful life.

Given that section 37 of the Act states that a tenant is not responsible to compensate a landlord for losses due to normal wear and tear, I find that the landlord is not entitled to any compensation for the replacement of the damaged doors or drapes and this portion of the landlord's application must be dismissed.

Based on the testimony and evidence I find that the landlord is entitled to total monetary compensation in the amount of \$673.10, comprised of \$36.70 for utilities, \$120.00 for

general cleaning, \$106.40 for carpet cleaning, \$60.00 for window cleaning, \$300.00 for the countertops and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$372.75 security deposit and interest in partial satisfaction of the claim, leaving a balance of \$300.35. I hereby grant a monetary order in the amount of \$300.35 to the landlord. This order must be served on the tenant and may be enforced in small claims court if necessary. The remainder of the landlord's application is dismissed without leave.

### **Conclusion**

The landlord is partially successful in the monetary claim and is granted an order to retain the tenant's security deposit and issued a monetary order for the remainder.

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: February 14, 2013

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Residential Tenancy Branch

