



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, (MNSD)

### Introduction

This matter dealt with an application by the Landlord for a monetary order for damages to the rental unit. At the beginning of the hearing the Landlord applied to amend her application to include a claim that she be entitled to keep the Tenant's security deposit. The Tenant consented to the amendment and the Landlord's application is amended accordingly.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 1, 2005 and ended on January 31, 2009. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy. The Landlord claimed that she resided in the rental unit prior to the tenancy. The Landlord also claimed that the carpets were 5 years old and in good condition at the beginning of the tenancy except for some discoloration on the stairs from wear and tear and some staining on one of the risers. The Landlord said she did a condition inspection report with the Tenant at the beginning of the tenancy but did not provide a copy of that report as evidence at the hearing. The Landlord also said that the carpets were professionally cleaned at the beginning of the tenancy.

The Landlord argued that at the end of the tenancy the carpeting on the stairs and in the master and guest bedrooms was damaged by urine from the Tenant's dogs and had to be replaced. In particular, the Landlord claimed that the urine had penetrated through the underlay and permeated the sub-floor. In support, the Landlord provided three witness statements, two of which were from persons related to her that helped her to do various renovations and repairs in February, 2009 prior to her putting it on the market for sale. All three deponents claimed to have smelled a strong odour of urea in the rental unit and two of them claimed that it was coming from the carpets. The Landlord admitted that she had 2 cats when she resided in the rental unit but that they did not spray on the carpets.

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The Landlord also provided a photograph of the underside of a piece of carpet from the stairs that showed it to be stained. The Landlord admitted she did not try to salvage the carpets as she believed based on her own observations of the extent of the damage and the advice of a realtor that they could not be salvaged. The Landlord also claimed that her insurance adjuster refused to pay for the carpets because she believed the damage was the result of pet urine. The Landlord said that it cost her \$2,260.00 to replace the underlay and carpet and she sought to recover \$1,000.00 of that expense from the Tenants.

The Tenant admitted that his dogs had “accidents” on the carpet but claimed that he and his partner always cleaned up after them and used a carpet cleaner every 4 – 6 weeks to keep them in good condition (because they were very light). The Tenant agreed that the carpets were in good condition at the beginning of the tenancy but said there was some pre-existing fraying in the master bedroom by the door and on one of the risers on the stairs.

The Tenant argued that the damage to the master bedroom carpet was the result of flooding in the unit on December 14, 2008 from a frozen fire suppression pipe. The Tenant claimed that water flooded into the master bedroom and a restoration company had to be called to remove the water from the walls and carpet. The Tenant claimed that the Landlord went through the rental unit 2 days later with a realtor and saw the damages. Then on December 17, 2008 the Tenant said the Landlord sent him an e-mail in which she advised him not to bother cleaning the carpets as she (the Landlord) would be removing them. The Tenant said he later had to treat the edges of the carpet with a mould killer.

The Landlord claimed that she could smell an odour of urea in both bedrooms and from the stairs on December 16, 2008. The Landlord admitted that she told the Tenant on December 17, 2008 that the carpets in the bedrooms would have to be replaced but specified that it was because of the smell of dog urine. The Landlord said that despite treating the sub-floor, a “pet smell” could be detected by prospective purchasers in early March, 2009. The Tenant argued that no one ever complained to them that the rental unit was unclean or smelled of urea.

## Analysis

Section 32 of the Act says that a Landlord is responsible for maintaining and repairing a rental unit unless the damage is caused by an act or neglect of the Tenant other than reasonable wear and tear.

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I find that the carpets were likely reasonably clean at the beginning of the tenancy save for some discoloration and fraying on the stairs and some fraying in the master bedroom. In the absence of a condition inspection report at the end of the tenancy it is not clear as to the extent and nature of the damage to each of the 3 carpeted areas in question and whether all of them were unsalvageable. The Landlord provided only one photograph showing that something had saturated the underside of the carpeting on the stairs. The only other evidence of the condition of the carpets was the witness statements that there was an odour of urea coming from all of the carpets.

Consequently, I find that the carpet on the stairs was likely damaged by the Tenant's dogs and needed to be replaced. With respect to the carpeting in the master bedroom and guest bedroom I find that there probably were some pet urine spots based on the fact that there was a pet urine smell coming from them. However, I find that there is insufficient evidence to conclude that these carpets could not be salvaged. In particular, there is no evidence that urine permeated the underlay and sub-floor in this room or the guest room. Furthermore, I give some weight to the Tenant's argument that the flood water started mould and mildew in the master bedroom carpet and likely contributed to the Landlord's decision to remove the carpet. As a result, I find that there is insufficient evidence that the Tenants are responsible for replacing the carpets in these 2 rooms.

Section 7 of the Act says that a party that suffers damage must do whatever is reasonable to try to minimize her losses. This means that the Landlord should have given the Tenant an opportunity to try to have the carpets cleaned and treated (or deodorized) to see if those measures would have worked prior to ripping them out.

The Landlord provided copies of invoices in support of her claim for the cost of carpet replacement. One invoice for \$636.60 is for removal of the old carpet and underlay and installation of the new carpet. The 2<sup>nd</sup> invoice for \$1,602.00 is for the new carpeting and underlay. Given that the Landlord removed the carpet and underlay from the stairs, I find that the only applicable charge on the 1<sup>st</sup> invoice is for installing carpet on the stairs in the amount of \$78.00 plus GST of \$3.90 for a total of \$81.90. I also find that the Tenants are liable for 1/3 of the cost of the new carpet and underlay or \$534.00 (which includes GST). In summary then, I find that the Tenants are responsible for **\$615.90** of the carpet replacement expense.

As the Landlord has been successful in this matter, I find that she is also entitled to recover her **\$50.00** filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:



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	Carpet replacement:	\$615.90
	Filing fee:	<u>\$50.00</u>
	Subtotal:	\$665.90
Less	Security deposit:	(\$500.00)
	Accrued interest:	<u>(\$17.70)</u>
	Balance owing:	\$148.20

## Conclusion

A monetary order in the amount of **\$148.20** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: May 11, 2009.

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Dispute Resolution Officer