



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for unpaid rent, loss of rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. The tenant was served with notification of today's hearing by registered mail and was represented by his son who resided at the rental unit (herein referred to as the occupant). Both parties were provided the opportunity to be heard and to respond to the other parties' submissions.

The tenant provided photographs of the rental unit as evidence for the hearing but did not serve the photographs upon the landlord and I did not accept them as evidence.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and loss of rent, and if so, the amount?
2. Has the landlord established an entitlement to damages to the rental unit and if so, the amount?
3. Retention of the security deposit.
4. Award of the filing fee.

### Background and Evidence

Upon hearing testimony of both parties and upon review of the documentation before me, I make the following findings. The one year fixed term tenancy commenced May 5, 2008 with the possession. The landlord and the tenant's son conducted a move-in inspection and occupation took place on May 15, 2008. The rental unit was occupied by the tenant's son and his wife but the tenant named in the tenancy agreement did not reside in the unit. The tenant was required to pay rent of \$1,800.00 on the first day of the month and had paid a \$900.00 security deposit on May 5, 2008. On December 1, 2008 the tenant failed to pay \$600.00 of rent due. The occupant and the landlord had a verbal discussion near the end of December 2008 whereby the occupant informed the landlord that he could no longer afford to pay rent and would be vacating the rental unit. The occupant or the tenant did not provide the landlord with written notice to end tenancy. The tenant did not pay rent for the month of January 2009 and the occupants

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vacated the rental unit on or about January 6, 2009. The occupant telephoned the landlord on the day he vacated and told the landlord they had moved out. The landlord did not request the occupant return to the rental unit to conduct a move-out inspection as the occupant was already in Salmon Arm by the time they spoke on the phone.

The landlord is claiming a total of \$18,500.89 against the tenant which is comprised of the following:

**Strata fines -- \$750.00**

The landlord claims the occupant was provided a copy of the strata by-laws at the time of move-in and was aware from verbal conversations that the strata was fining the landlord for the occupant's installation of a satellite dish. The occupant stated that he was notified of the strata by-laws a few months before the end of his tenancy but that nowhere did it state in the tenancy agreement that he could not install a satellite dish. The landlord acknowledged that the strata did not provide a warning before issuing a fine in September 2008.

**Pest control -- \$249.00**

The landlord claims rats penetrated the rental unit after being attracted by the garbage left in the garage by the occupants. The occupant claimed that there was a hole in the wall that would allow rats to enter the unit. The occupant explained that garbage was left in the garage as they could not leave it outside due to bears and that normally it was taken out once a week for garbage pick up.

**Repainting -- \$918.75**

The landlord is seeking recovery of the cost to repaint the unit. The landlord acknowledged that the original paint job completed by the developer was poor and marked easily; however, it was the landlord's position that the damage to the walls was beyond normal wear and tear.

**Cleaning and dump fees -- \$583.75**

The landlord provided a written statement from the person who cleaned the rental unit describing the dirty condition of the rental unit which took the cleaner 23 hours to clean. The cleaner invoiced the landlord \$25.00 per hour and \$8.75 in dump fees. The landlord stated most of the cleaning was done prior to the painting and only a couple of hours were spent cleaning after the painting.

**Carpet cleaning -- \$585.70**

The landlord incurred this expense in an effort to remove the stains from the carpet.

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## **Carpet replacement -- \$7,613.69**

The landlord claimed that the carpet was badly stained by the occupants and cleaning did not remove the stains from the carpet. The landlord received two quotes for carpet replacement and chose the lower quote. As evidence of the cost of carpet replacement the landlord provided the estimate dated April 23, 2009. The landlord explained that the estimate of April 23, 2009 is also the invoice and that the carpet was replaced just before new tenants occupied the rental unit at the beginning of May. The landlord also explained that the landlord waited at least one month for a quote from the first company who installed the carpet for the developer as the landlord believed this to be the most economical option as the carpet installer was still working in the development.

The landlord claimed the original carpeting was only 10 months old but had to be replaced due to what appeared to be urine stains and bleach stains in three areas. The remainder of the carpet was replaced so that the carpet would have a continuous flow. Only the carpet in the basement was able to be cleaned satisfactorily. The landlord's agent who showed the unit to prospective tenants testified that all the prospective tenants commented on the poor condition of the carpeting and that it was a factor in not attracting replacement tenants.

## **Unpaid rent and loss of rent**

The landlord is claiming compensation for \$600.00 in unpaid rent for December 2008, \$1800.00 in unpaid rent for January 2009 and loss of rent for the months of February, March and April 2009 at a rate of \$1800.00 per month. The landlord testified that the rental rate was reduced to \$1650.00 to attract tenants and a new tenancy agreement was eventually entered into for \$1600.00 per month. The landlord attributes the delay in finding replacement tenants to the condition of the rental unit, waiting for the carpet estimates and the downturn in the rental market in the area due to a high volume of available units.

The occupant explained that the week before Christmas he and his wife lost their jobs. The occupant met with the landlord and advised the landlord they would not be able to pay rent. The occupants left early in the morning of January 6, 2009 to avoid a snow storm and phoned the landlord from the road. The occupant acknowledges responsibility for paying for the unpaid rent for December 2008 and January 2009 but did not feel responsible for paying beyond January 2009. The occupant submitted that he watched the landlord's website and observed that the landlord initially advertised the rental unit for \$1800.00 per month and then had to drop the advertised rent to \$1650.00 to attract tenants.

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The occupant acknowledged that he should be responsible for paying the strata fines for the time period after he was informed of the by-laws prohibiting satellite dishes and fines that would result in the few months prior to him vacating. The occupant acknowledged leaving some personal belongings behind and that he only vacuumed the carpets. The occupant acknowledged some dirty areas in the carpet but did not agree that the carpets required replacement.

The occupant denied responsibility for a rodent entering the rental unit or that the painting was required due to his actions. Rather, the tenant pointed to the inferior paint job performed before he moved in. The tenant indicated that the cleaner did most of the cleaning after the unit was sanded and painted which he did not agree was his responsibility.

The landlord refuted the occupant's submissions by stating that advertising of the rental unit at \$1,650.00 commenced right away and that the unit did not rent due to the high inventory of rental units in the area and that the unit did not show well due to its poor condition after the tenancy ended. The landlord did not provide documentary evidence of the advertising efforts. In an effort to settle this matter, the landlord agreed to withdraw the request for loss of rent for March and April 2009.

After hearing the occupant testify, the landlord attributed the rodent problem to the occupants leaving garbage in the garage. The landlord claims that occupant was given the strata by-laws upon occupying the rental unit and was aware of the strata fines at the commencement of the tenancy. The parties provided only disputed verbal testimony with respect to when the strata by-laws were given to the occupant.

Upon enquiry, the landlord testified that photographs of the stained carpet were not provided because the stains did not show up in photographs very well. The carpet cleaner's invoice does not describe the condition of the carpet or a detailed description of the work performed, only that the carpets were cleaned. The landlord did not provide a sample of the carpet as evidence.

## Analysis

The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant is responsible for paying for damages or loss incurred by the landlord as a result of actions of the tenant, or persons permitted on the property by the tenant, including occupants. Therefore, where I have been satisfied that the occupants are responsible for causing the landlord damages or loss, the tenant has a responsibility to compensate the landlord.

With respect to the strata by-laws, I find the disputed verbal testimony to be insufficient to show that the landlord informed the tenant of the strata by-laws at the commencement of the tenancy and that the tenant would be subject to fines as a result of installing a satellite dish. The tenancy agreement provides that a tenant will complete a Form K at the beginning of the tenancy, "when the bylaws are provided". The landlord's evidence does not indicate the tenant completed a Form K or that the bylaws were provided at the beginning of the tenancy. Rather, the landlord's only documentation with respect to a by-law fine is a document entitled Tenant's Ledger with reference to a "Sean James Barrett Montgomery (0013mo15)". This individual is not the tenant and the rental unit is not identifiable from the ledger. Nor did the landlord provide a copy of the communication from the strata corporation, communication with the tenant with respect to removing the satellite dish or paying the fines, if any, and did not provide a copy of the strata bylaws for my review. Therefore, I find the landlord has provided very insufficient evidence to substantiate a claim for bylaw fines against the tenant and I deny this portion of the landlord's claim without leave to reapply.

With respect to the pest control for the rodent problem, I do not see how the tenant is responsible for a rodent entering the premises. Even if I accept that the rodent was attracted to garbage in the garage it has not been established how the rodent entered an enclosed garage and that penetration by the rodent was a result of the tenant's or occupant's actions. I heard there was a hole in the wall that the rodent had penetrated; however, I did not hear sufficient evidence that the tenant or the occupants caused the hole in the wall. Therefore, I dismiss the landlord's request for recovery of pest control costs without leave to reapply.

As the landlord did not provide photographs of the rental unit at the end of the tenancy or complete the move out inspection, the damage to the walls beyond scuffs and scratches was unclear. Based on the testimony of both parties, I accept that the interior walls were scuffed. However, as I heard undisputed testimony that the original paint job in the rental unit was inferior, I do not find sufficient evidence that the scuffs and marks were beyond normal wear and tear considering the poor finish of the original paint. A tenant is not responsible for normal wear and tear and I do not find the landlord has established an entitlement to recover any portion of the repainting costs from the tenant. I dismiss this portion of the landlord's claim without leave to reapply.

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As the occupant acknowledged he left some items in the rental unit and did not clean the carpets, and I accept that the occupant vacated rather abruptly, I am satisfied that it is more likely that the carpets needed cleaning as did the rest of the rental unit, including a trip to the dump. Upon review of the letter written by the cleaner, I find the majority of the cleaning related to the condition the rental unit that was left by the occupants and not due to the subsequent sanding and painting. Therefore, I find the landlord has established an entitlement to recover the carpet cleaning of \$585.70 and cleaning costs of \$533.75 (\$583.75 less \$50.00 attributable to the cleaning performed about the time of the repainting).

The carpet replacement is the greatest single amount being claimed by the landlord. As with any monetary claim, the party making the claim has the burden to prove certain criteria in order to establish the other party is liable for the amount claimed. The party making the claim must be able to show:

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent
- c. Verification of the actual monetary amounts to compensate for the claimed loss or to rectify the damage.
- d. The party making the claim did whatever was reasonable to minimize the damage or loss.

Based on the evidence before me, on the balance of probabilities, I accept that the carpets were stained by the occupants prior to the tenancy ending and I accept that the carpet were subsequently replaced; however, I find the landlord's evidence lacks significantly in establishing that the stains could not be sufficiently removed by the cleaning and that all of the carpet, except the basement carpet, had to be replaced to remedy any remaining stains caused by the occupants. I have considered that two of the representatives for the landlord testified that the stains were not removed after cleaning the carpets; however, I find the landlord should have and could have provided other evidence to corroborate such statements, including statements from the carpet cleaners, photographs, or a sample of the carpet. Essentially, in order to justify an award of \$7,613.69 for carpet replacement I expect more evidence that the carpets were not salvageable other than verbal statements of the landlord. I also note that the cleaner who performed the general cleaning commented on the badly stained carpets; however, the statement does not indicate whether the person is referring to the stains

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before or after the carpets were cleaned so I have found that the statement was referring to carpets before cleaning.

Upon hearing the testimony of both parties, I am satisfied the tenant had not provided sufficient notice to the landlord that the tenancy would be ending on January 6, 2009 or any other specific date. Upon review of all the evidence, I accept that the unit required additional cleaning and with the abrupt departure of the occupants, I accept the landlord's position that it should be entitled to unpaid rent to include February 2009. In recognition that it is not in dispute the tenant did not pay \$600.00 in rent for December 2008 and did not pay rent for January or February 2009, I award the landlord \$4,200.00 in unpaid rent and loss of rent. I do not award the landlord loss of rent beyond February 2009 because I was not satisfied that the landlord sufficiently mitigated the loss of rent for subsequent months.

I authorize the landlord to retain the tenants' security deposit and accrued interest in partial satisfaction of the rent owed the landlord. As the landlord was partially successful in this application, I award the landlord one-half of the filing fee paid for this application.

In light of the above awards, the landlord is provided a Monetary Order with a copy of this decision, calculated as follows:

Cleaning and dump fees	\$ 583.75
Carpet cleaning	535.70
Unpaid rent – December 2008	600.00
Unpaid rent – January 2009	1,800.00
Loss of rent – February 2009	1,800.00
Sub-total	\$ 5,319.45
Filing fee (one-half)	50.00
Less: security deposit and interest	(908.89)
Monetary Order	<u>\$ 4,460.56</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The landlord is authorized to retain the tenants' security deposit and interest in partial satisfaction of amounts owed the landlord and the landlord is provided a Monetary Order for the balance owing of \$4,460.56.





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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: August 13, 2009.

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Dispute Resolution Officer