



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other parties' submissions.

### Issues(s) to be Decided

1. Has the landlord established a claim for damage or loss under the Act, regulations or tenancy agreement and if so, the amount?
2. Retention of the security deposit.
3. Award of the filing fee.

### Background and Evidence

Based upon the evidence before me, I find that the one-year fixed term tenancy commenced June 1, 2008 and the tenants vacated the rental unit March 31, 2009. The tenants gave written notice to end tenancy on February 24, 2009 to be effective March 31, 2009 and stated the reason for ending tenancy was the high cost of rent. A security deposit of \$632.50 had been paid by the tenants May 3, 2008. The parties conducted a move-in and move-out inspection together although the tenants did not sign the move-out inspection report.

The landlord is seeking to recover the following amounts from the tenants:

Cleaning	\$ 40.00
Carpet cleaning	85.00
Window covering cleaning	194.40
Painting	450.00
Lease break fee	200.00
Visitor's pass	50.00
Filing fee	50.00
Total	<u>\$ 1,069.40</u>

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The tenancy agreement was provided as evidence. Clause 5 provides for payment of liquidated damages of \$632.50 should the tenants end the tenancy before the end of the term. Clause 31 requires the tenants to professionally clean the carpets and window coverings at the end of the tenancy if they were new or professionally cleaned at the start of the tenancy. The landlord contended the carpet was new and the blinds cleaned at the beginning of the tenancy. The landlord provided invoices showing cleaning of the carpets and blinds at the end of the tenancy.

The landlord testified the tenants left the walls dirty with holes and scratches, requiring the landlord to repaint several walls in the unit. The landlord provided an invoice for painting in the amount of \$450.00. The tenants disputed this portion of the landlord's claim as being excessive. The tenants stated they had a few pictures hung on the walls and a scratch in the hallway from moving but alleged that the walls were in good condition at the end of their tenancy. The tenant contended that relatives of the landlord's agents actually did the painting and that the amount charged to the tenant is excessive for a few touch ups. The tenant also claimed that the landlord's agent had stated that the landlord would not have charged the tenants for painting if they had occupied the rental unit for the entire term of their tenancy. The landlord did not dispute that it is the landlord's practice to not charge for painting if tenants stay a certain length of time.

The landlord claimed two hours of cleaning were required after the tenants vacated at the rate of \$20.00 per hour. The landlord provided photographs as evidence of cleaning required. The photographs show food spills under the rings on the stove and in the crevices in the seal of the refrigerator. Photographs of the inside of the dishwasher, the stove light, the inside of the toilet bowl, and the balcony were provided. The tenants disputed the additional cleaning costs saying the unit was left clean and that the landlord did not lift the stove rings or peel apart the fridge seal when they did the move-in inspection. The landlord acknowledged that a less thorough inspection was done at the move-in as these areas would have been inspected and cleaned at the end of the last tenancy. The tenants claim that the walls were not dirty as the landlord made them out to be and the pictures were taken very close up.

The tenants acknowledged misplacing the visitor's pass.

## Analysis

The tenancy agreement and the Act require the tenants to leave the rental unit undamaged and reasonably clean. Damage does not include normal wear and tear or deterioration due to normal aging of a fixture or thing. Residential Tenancy Policy Guideline 1 provides guidelines for determining the responsibilities of landlord's and

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tenants. The policy provides that most tenants hang pictures and that nail holes are not considered damage unless an excessive number of holes are excessively large holes are created by the tenant. A landlord may set rules about how pictures are to be hung. In this case, I find insufficient evidence that the tenants created an excessive number of nail holes or created very large holes. Upon review of the photographs, I do not find damage to the walls that would be considered more than normal wear and tear, except a gouge to the baseboard or trim and multiple light scuffs in the corner of a room. Therefore, I deny the landlord's request for \$450.00 as I find it excessive for the relatively minor damage caused by the tenants and I award the landlord \$75.00 as compensation for damage to the walls and trim.

Where a landlord inspects a rental unit to a certain degree at the end of the tenancy it is reasonable to expect that the landlord would have inspected the rental unit to the same degree at the commencement of the tenancy, in front of the tenants, so that the tenants can be assured that any unclean areas occurred during their tenancy. In this case, the landlord acknowledged that it did not inspect the rental unit as thoroughly at the beginning of the tenancy; therefore, the landlord has failed to prove that the food spills under the stove rings, in the fridge seal, on the stove light, among other things were caused during the tenancy. The landlord's pictures also depicted water stains on the balcony which I do not find the tenants responsible for causing. For these reasons, I deny the landlord's claim for additional cleaning costs of \$40.00.

In entering the tenancy agreement, the tenants agreed to professionally clean the carpets and window coverings at the end of the tenancy and I am satisfied these areas were new or clean at the beginning of the tenancy; therefore, I award the landlord \$85.00 and \$194.40 for costs to clean these items.

The parties had agreed at the beginning of the tenancy that the landlord would be at liberty to charge liquidated damages of \$632.50, a pre-estimate of the costs to re-rent the unit, should the tenants end the tenancy early. The landlord is requesting only \$200.00 for liquidated damages. I find the landlord entitled to claim such an amount under the liquidated damages clause of the tenancy agreement which I have found to be enforceable. Therefore, the landlord is awarded \$200.00 for liquidated damages.

As the tenant acknowledged the visitor's pass was not returned to the landlord, I award the landlord \$50.00 for its replacement, the replacement cost indicated in the documentation provided to the tenants by the landlord.

As the landlord was partially successful with this application, I award \$30.00 of the filing fee to the landlord. In light of the above findings, I authorize the landlord to retain the tenants' security deposit in satisfaction of the amounts owed the landlord and calculate the balance remaining as follows:



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Amounts awarded to landlord:

Carpet cleaning	\$ 85.00
Window covering cleaning	194.40
Painting and repair	75.00
Lease break fee	200.00
Visitor's pass	50.00
Filing fee	<u>30.00</u>
Total award to landlord	\$ 634.40
Less: security deposit and interest	<u>(638.80)</u>
Security deposit balance	<u>\$ 4.40</u>

As the remainder of the security deposit is insignificant I do not provide a Monetary Order to the tenants I consider this dispute resolved.

## Conclusion

The landlord is authorized to retain the tenants' security deposit and interest in satisfaction of the landlord's claims against the tenants. Neither party is provided a Monetary Order and this matter is considered resolved.

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 18, 2009.

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Dispute Resolution Officer