



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee.

This matter was originally scheduled for hearing on December 23, 2009; however, the respondent did not receive the landlords' evidence package as required so the hearing was reconvened so that the landlord could re-serve the tenant with her evidence and provide the tenant opportunity to submit evidence in her defines. The tenant confirmed she received the landlords' evidence before the reconvened hearing held today.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

Is the landlord entitled to money owed or compensation for damage or loss to the carpet, damage to the ceiling and for cleaning of the rental unit?

## Background and Evidence

Both parties agree that the tenancy started on June 15, 2005 and ended on May 15, 2009 although the tenant actually moved from the rental unit on May 07, 2009. Rent for this unit was \$950.00 per month and this was due on the 15<sup>th</sup> of each month.

The landlord testifies that after the tenant moved from the rental unit she found that some damage to the ceiling had not been repaired. This damage occurred after a toilet overflowed in the bathroom above this ceiling during the tenancy. The landlord has provided a letter from the plumber that attended the unit at the time the damage on the ceiling was reported to the landlord. In this letter the plumber states that after investigation and questioning of the tenant he was told by the tenant that her daughter had overflowed the toilet. The landlord states that it is the plumber's opinion that this damage was caused from a blockage in the toilet which caused some flooding and consequently created the damage on the ceiling. The landlord claims it will cost \$150.00 to buy primer and paint to repair the ceiling.

The tenant disputes the landlords' testimony. The tenant claims that she came home and saw the patch on the ceiling she checked the bathroom above and found no water on the bathroom floor or evidence that the toilet had overflowed. She agrees that a plumber did come to the unit but disagrees that she told him her daughter had blocked the toilet.

The landlord testifies that the tenant caused damage to a carpet in a bedroom. She found a melted plastic like substance on the carpet which could not be removed. The landlord claims it will cost \$200.00 to replace this carpet.

The tenant disputes the landlords' testimony concerning the stain on the carpet. She claims there was a small amount of nail polish on the carpet and this should be classed as normal wear and tear.

The landlord testifies that the tenant did not clean the rental unit thoroughly at the end of the tenancy. The landlord claims the bathrooms were left in a filthy condition and the kitchen had not been cleaned. When she inspected the house and yard it appeared that no housekeeping or yard work had been done and the rest of the house required generally cleaning. The landlord claims she spent over 10 hours cleaning the house at a cost of \$100.00.

The tenant disputes this section of the landlords' testimony. The tenant claims she did clean the house from top to bottom but agrees that she did not manage to finish cleaning the kitchen and the self-cleaning oven was not activated. The tenant claims that all the bathrooms were cleaned. The tenant's witness gave evidence on behalf of the tenant and confirmed that she had helped the tenant clean the house at the end of the tenancy. This witness testifies that she vacuumed the carpets in the basement, the stairs and the upstairs portion of the house with the exception of the living room and kitchen. This witness also testifies that she helped the tenant do some generally cleaning in the bedrooms and she saw the tenant in the bathrooms.

The landlord did not wish to cross examine this witness and agrees that the areas that the witness cleaned were done well. The landlord has provided some photographic evidence of the ceiling and carpet and a copy of the move in condition inspection report

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. I have applied a test for damage or loss claims to determine if the landlord is entitled to a monetary award for damage to the ceiling and carpet.

In this instance the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet all of the components of the above test. While I find it is likely that the mark on the ceiling did occur during the tenancy and in the plumbers opinion this was due to a blockage in the toilet caused by the tenants' daughter. The landlord has not provided any evidence to verify the actual amount required to compensate her for this damage to the ceiling or what steps she took to minimize this damage or loss during the tenancy pursuant to s.7 (2) of the Act. I also find the landlord does not meet all the components of the test for her claim for damage to the carpet. The landlord has not provided any estimates or receipts to verify the actual amount required to compensate her for this damage or loss. Due to a lack of any supporting evidence for these sections of the landlords claim there are dismissed.

With regard to the landlords claim for \$100.00 for cleaning the rental unit. Under the Act s. 32 a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do

Residential Tenancy Branch  
Ministry of Housing and Social Development

extra cleaning to bring the premises to the high standard that she would want for a new tenant or for herself. The landlord is not entitled to charge the former tenant for the extra cleaning. The landlord did not provide evidence of the move out condition inspection report to determine the condition of the rental unit at the end of the tenancy. The landlord has not provided sufficient evidence that the rest of the rental unit was left in a filthy state particularly the bathrooms. The landlord did agree that the tenants witness had done a good job in cleaning some areas of the rental unit. In this case it is my decision that the landlord has not shown that the tenant failed to meet the "reasonable" standard of cleanliness required and this section of the landlords' application is also dismissed.

As the landlord has not been successful with her claim I find she must bear the cost of filing her own application.

## Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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 03, 2010.

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Dispute Resolution Officer