



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damage to the unit, compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 17, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenants and the Landlords present.

### Issues(s) to be Decided

1. Are there damages to the rental unit and if so what is the dollar amount of the damages?
2. Is the Landlord entitled to compensation for damages or loss and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on February 1, 2010 as a 6 month fixed term tenancy with an expiry date of July 31, 2010. Rent was \$1,150.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$575.00 in January, 2010.

The Landlord said they hired a property management service to manage the rental of their property while they were out of the country for approximately 1 year. During the time they were away they had two different tenancies. The first tenancy was with a male from July, 2009 to January, 2010 and the second tenancy was with the Tenants from February 1, 2010 to July 31, 2010. The Landlord said when they returned they did a walk through inspection with the property manager on July 31, 2010 and discovered the hard wood floor in the rental unit had divots and marks throughout the floor. The Landlord continued to say that the property manager had missed it on the move out inspection, but he would advise the Tenants of the damage to the floors.

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The Landlord has submitted cost estimates from flooring companies to establish the cost to repair the floor. The evidence from the flooring company indicates the marks are consistent with marks made by women's high heel shoes and are too deep to sand and fill, so the floor needs to be replaced. The Landlord said they purchased the property in May, 2009 and they were the first people to occupy the newly built property. As well the Landlord said they have submitted the move in inspection report that indicates there were some scratches on the floor, but no divots or heel marks. The Landlord also said the property manager has contacted the Tenants twice about an inspection of the unit with the Landlord, but the Tenants have declined.

The Landlord also said that they had submitted into evidence a complaint of the tenant below the rental unit saying that the Tenant's in the unit were noisy and she heard high heeled shoes walking on the floors.

The Landlord said they are claiming for \$5,947.20 to replace the hard wood floors, \$155.16 for carpet cleaning and the filing fee for this proceeding of \$100.00. The total claim of the Landlords is \$6,202.36.

The Tenant said that when they did the walk out inspection with the property manager he told them they would be responsible for the carpet cleaning and that was all. The Tenant said they did not sign the walk out inspection report as they thought it was finished. The Tenant said the property manager could take the carpet cleaning costs out of their security deposit.

The tenant said she did not notice the divots and marks on the floor when they moved in, but did notice some marks about 1 month into the tenancy. She said she didn't give it much thought. The Tenant said that when the property manager told her about the divots and marks in the floor she thought that some of the marks were due to the first tenancy and some maybe have been caused by their tenancy. The Tenant said there was floor damage indicated on the move in inspection report.

The Tenant said the complaint from the tenant in the unit below is immaterial to this hearing as the tenant from that unit did not like them and that they do not wear high heeled shoes often.

The Tenant asked the Landlord if she had checked with her insurance company to see if the floor damage could be covered by an insurance claim. The Landlord said that she had called her insurance company and they told her it was not covered because they viewed the damage as being caused by the Tenant.

The Tenant ended by saying the property manager didn't say anything about the floor condition on the walk out inspection so maybe he missed it on the move in inspection as

well. The Tenants said that they may have caused some damage to the hard wood floors with normal wear and tear, but they did not do all the damage to the floors.

## Analysis

Section 32 (3) says that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the Landlord has established proof of the damage to the hard wood floors and the cost to repair them. It is less clear if all the damage was done by this tenancy or by the two tenancies. The Property Manager may have made an error on the move in inspection report and has made an error on the move out inspection report. This error was caught and resolved by the Landlord on their walk through on July 31, 2010, which was the same day as the Tenants' walk through. There is conflicting testimony about who did the damage, but there is agreement that the floors are damaged and need to be replaced.

The Landlord has tried to mitigate their damages by contacting their insurance company and getting an opinion and estimate to repair the hardwood floors. The insurance indicated no coverage and the repair estimate indicated that they could not completely repair the floors to the previous condition.

The Tenant said they were unaware of the divots and marks in the floor until a month or so into the tenancy and the Tenants agreed they may be responsible for some of the damage to the floors. As well the Tenant said they didn't pay much attention to the marks and didn't call the Property Manager about the floors. I find that the Tenant has damaged the hardwood floors and neglected to take any action to resolve the damage. I do accept the Tenants' testimony that the previous tenant may have caused some of the damage as the Property Manager's inspection reports are in question. Consequently I find that 80% of the cost to repair the hard wood floors \$4,757.76 is to be paid by the Tenant to the Landlord as well as the carpet cleaning of \$155.16 and as the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the monetary claim. The Landlord will receive a monetary order for the balance owing as follows:



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New flooring (80% X 5,947.20)	\$ 4,757.76
Carpet Cleaning	\$ 155.16
Filing Fee	\$ 100.00
Subtotal	<u>\$ 5,012.92</u>
Less Security Deposit	\$ 575.00
Subtotal	<u>\$ 575.00</u>
Balance owing	<u>\$ 4,437.92</u>

## Conclusion

A Monetary Order in the amount of \$4,437.92 has been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Dispute Resolution Officer