



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord dated October 05, 2011 pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for damages to the unit – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord's claim on application is as follows:

Painting	\$150.00
Professional carpet cleaning	\$75.00
Filing fee for this application	\$50.00
<b>Total of landlord's claim <i>on application</i></b>	<b>\$275.00</b>

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The following is undisputed. The tenancy began on August 01, 2009 and ended September 30, 2010. Rent in the amount of \$830 was payable in advance on the first day of each month. At the outset of the tenancy and at the end of the tenancy the parties conducted respective condition inspections but did not arrive at an agreement as

to the administration of the security deposit. The landlord claims that the landlord had to repaint a portion of the rental unit to the original colour upon occupancy (\$150) and had to have the carpeting professionally cleaned as per the tenancy agreement (\$75).

The landlord provided a copy of an approval letter (Suite Painting Agreement) signed by the tenant in 2009 – agreeing to a request by the tenant to paint the unit a colour other than the original colour of the unit, and contingent on the tenant returning the suite to the original colour one month prior to vacating the unit to allow for re-renting the unit. The landlord testified that the tenant did not repaint the suite to the original colour as agreed and had to have a professional painter do the work.

The landlord provided an invoice for repainting in the unit, as well as a copy of the tenancy agreement, minus the page (missing page) purportedly containing the term respecting carpet cleaning. The landlord testified that at the outset of the tenancy the tenant was sent a full copy of the tenancy agreement.

The tenant claims they did not receive the missing page of the tenancy agreement referencing carpet cleaning. However, the tenant provided proof of correspondence from the landlord dated one month before vacating in which the tenant initiated a request to do the carpet cleaning themselves – which the landlord declined and reminding the tenant of Section 23 of the agreement respecting carpet cleaning to be done professionally.

The tenant claims that the landlord agreed to extend the re-painting date later than originally agreed – claiming the landlord agreed to the extension. The tenant then repainted the suite on the last day of the tenancy. The tenant claims the landlord purportedly initially gave the tenant the wrong colour particulars to repaint the unit to the original colour and the tenant could not meet the agreement to return the paint to the original colour.

### **Analysis**

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing. On preponderance of the evidence and on the balance of probabilities I have reached a decision.

I find that despite the tenant's assertions the landlord agreed to an extension / change in the Suite Painting Agreement, the tenant did not provide evidence of such a change, allowing them to extend the date of the repainting. I find that had the tenant complied with the terms of the original agreement, it would likely have afforded the tenant time to accomplish the terms of the agreement and avoid unforeseen problems. As such, the tenant waited until the day they vacated to do the repainting and it was not to the original colour as agreed in the Suite Painting Agreement. I find the landlord had to

bear the cost of repainting and is entitled to costs claimed and supported, in the amount of **\$150**.

I find that the tenant initiated the request to clean the carpets themselves as they owned their own carpet cleaner. Therefore, I find that the tenant knew it was not available to them to do it themselves. I find the landlord then reminded the tenant of their agreement, citing the section number. Despite the tenant's assertion that they did not receive the 'missing page' of the tenancy agreement; on the balance of probabilities, I prefer the landlord's testimony that the tenants received a full tenancy agreement. I find that the tenant's ought to have known to have the carpets professionally cleaned, and that their query to clean the carpets themselves indicates, on the balance of probabilities, that the tenant knew to have the carpets professionally cleaned. I find that the landlord has met their burden for their claim for carpet cleaning in the amount of **\$75** and therefore I will allow it.

I find the landlord's application has merit, and the landlord is therefore entitled to recovery of the filing fee from the tenants for the cost of this application in the amount of **\$50**. The landlord's total award is in the amount of **\$275**.

### **Conclusion**

**I order** that the landlord may retain **\$275** from the tenant's security deposit in satisfaction of their award, and return the balance to the tenant in the amount of \$135. So as to perfect this Order I grant the tenant an order under Section 67 of the Act for the balance due of **\$135**. If necessary, this order may be filed in the Small Claims Court 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*.