



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNSD MNDC FF  
                                 MNDC MNSD

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking a Monetary Order for the return of double her security deposit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on October 6, 2010. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents and most recent amended application by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on January 17, 2011. The Agent confirmed receipt of the Tenant's hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof for a monetary claim as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof for a monetary claim as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective June 3, 1996. Rent was payable on the first of each month in the amount of \$877.50. The Tenant paid a security deposit of \$300.00 on June 3, 1996. The tenancy ended July 31, 2010 after a 2 Month Notice to End Tenancy was issued and upheld in a previous dispute resolution hearing. No move-in inspection was conducted. A move-out walk through was completed July 31, 2010 however the move-out form was not completed. The Tenant provided her forwarding address to the Landlord July 31, 2010.

The Tenant testified that she rented the basement suite for 14 years always paying her rent on time. At times she had to tolerate periods of no heat and smells of mildew. There was a fireplace in the suite but she was not allowed to use it. In May 2010 she was served with a 2 Month Notice to vacate for landlord's use of the property. She disputed the Notice, requesting more time, however that was denied and she had to move out by July 31, 2010.

She is seeking the return of double her security deposit (\$600.00) plus interest and compensation equal to two month's rent (\$1,755.00) because the Landlord evicted her and has not moved into the suite. She stated that she attended the move-out walk through with her brother and the Landlord and her two sons. She had paid to have a cleaning company clean the suite and hired a professional carpet cleaner to clean the carpets. The Landlord and her Agents questioned the stains on the carpet and she informed them that the carpet cleaners would come back at no charge to clean the carpets again. The Agent stated that they would look after getting the carpet cleaners back in and they would "take responsibility for the carpet". She provided the Agent with the company's telephone number which she called during the move out walk through.

She handed the Agent the telephone and he made the arrangements for the carpet cleaners to return and re-clean the carpets.

The Tenant referred to a statement she provided in her evidence from her brother who had attended the inspection. He states in response to the carpet cleaning the Agent took the phone from his sister and said "we will take care of it". He further states the Agent said the Landlord "would take responsibility for the carpet cleaning".

The Agent stated there were never any complaints about insufficient heat in the suite. The Tenant showed up at the move-out walk through with a hand written letter she wanted the Landlord to sign. The letter makes reference to the carpet stains and the Landlord added at the bottom of the letter "or it will have to be replaced". The Tenant refused to sign this letter she created after the Landlord added the comment. He confirmed that they did tell the Tenant, "we will take care of it", in reference to arranging for the carpet cleaners to return. He stated the Tenant was extremely abusive to the Landlord so they did not want her to return to the unit, which is why they agreed to deal with the carpet cleaners. The cleaners returned on approximately August 14, 2010, and did provide a second cleaning for free. However, the cleaners were not able to remove the stains from the carpet as indicated in the photographs which were taken August 14<sup>th</sup> and are provided in their evidence. To clarify, they agreed to organize arrangements for the cleaners to return for a free cleaning and did not accept responsibility for the cost to repair or replace the damaged carpet.

In response to the Tenant's claim for compensation for the 2 Month Notice, the Agent advised the Landlord has occupied the unit as originally planned. The Landlord suffers from heat frustration and has utilized the basement suite as a space where she can cool down. She has a bed in the basement now so on hot days she can sleep in the basement. She enters the house through the basement suite when in the past she had to enter the upper floor by the outdoor stairs which pose a hazard for her now. The Agent confirmed no one else is occupying the basement suite and the Landlord is utilizing the space for her own purposes.

The Agent stated they are seeking \$1,867.00 for the cost to repair the carpet. They confirm the rental unit was cleaned and there were attempts to have the stains removed from the carpet. There were two other areas of significant damage, the fridge and the ceiling but they are not seeking compensation for those two items as they did not have a move-in inspection report to be able to prove the damage was not present at the onset of the tenancy. That being said, the carpet and underlay was new and was installed during this tenancy in September 2005. They contend that the stains, which are located in the entry, living room and dining room, are excessive and not normal

wear and tear. There are stains of red wine, rust from some furniture and other unknown substances. He referred to his photographs in support of the extent of the stains. To date, the carpet has not been replaced or repaired as they were awaiting the outcome of this hearing. He referred to a quote he provided in evidence to support the replacement would cost \$2,439.80. This estimate was obtained through conversation at the store based on the Agent's information and no one attended the unit to measure the existing carpet.

The Tenant stated that the stains were mostly normal wear and tear and the professional carpet cleaning company said they could get the stains out. She argued the Landlord's car leaked oil outside her door which caused her to have to walk through the oil which travelled into her suite. She did not have wine parties or spill red wine on the carpet. The stains were only located in the living room as noted on the carpet cleaning receipt. She confirmed the living room and dining room were one open space. Once she received the copy of the carpet replacement quote she called the number and was told there was no one there by that name so she questions who provided the quote.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

## Landlord's Application

Section 32 of the Act states 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.

The evidence supports the carpet was new in September 2005 and at the end of the tenancy, July 31, 2010, it was stained. I accept the Agent's testimony that they agreed to arrange for the second carpet cleaning and did not accept responsibility for the damage caused by the stains. This is further supported by the July 31, 2010 letter which was created by the Tenant and clearly states "carpet which is badly stained"; to which the Landlord added "or it will have to be replaced". I accept the Tenant arranged to have the carpet professionally cleaned however after two cleanings it did not repair the damage.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. The *Residential Tenancy Policy Guideline # 37* provides the normal useful life of carpet to be ten years. The carpet has not yet been replaced and the Landlord submitted an estimate of the cost of replacement based on a verbal description of the size and color match.

After careful consideration of the aforementioned I find the Landlord has met the test for damage or loss, as listed above. In the absence of the actual cost incurred to replace the carpet and considering the carpet is five years old, I award the Landlord a nominal amount of **\$653.45** (35% of \$1,867.00), pursuant to section 67 of the Act.

As the Landlord has been partially successful with her claim I hereby award her recovery of the **\$50.00** filing fee.

Landlord's Monetary Claim – I find that the Landlord is entitled to a monetary claim from the Tenant as follows:

Damage to carpet	\$653.45
<b>Subtotal (Monetary Order in favor of the Landlord)</b>	<b>\$703.45</b>

## Tenant's Application

The Evidence supports the Tenant vacated the rental unit July 31, 2010 and since that date no one other than the Landlord has used the suite. I accept the Agent's testimony that the Landlord has kept the suite for her own use, whether casual or regular use. Based on the aforementioned I find the Tenant provided insufficient evidence to support her claim for compensation pursuant to section 51(2) of the Act. Therefore I dismiss the Tenant's claim for compensation equal to two month's rent, without leave to reapply.

The evidence supports the tenancy ended July 31, 2010 and Tenant provided the Landlord her forwarding address on July 31, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than August 15, 2010. The Landlord did not file her application for dispute resolution until October 4, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the amount of the security deposit.

Based on the above, I find that the Tenant has proven entitlement to return of double her security deposit of \$600.00 (2 x \$300.00) plus interest of \$45.47 for a total of **\$645.47.**

Tenant's Monetary Claim – I find that the Tenant is entitled to a monetary claim from the Landlords as follows:

Double the security deposit (\$300.00 x 2)	\$600.00
<b>Subtotal (Monetary Order in favor of the Tenant)</b>	<b>\$645.47</b>

**Off-Set Monetary Claims – Cross Applications** – These claims meet the criteria under section 72(1) of the *Act* to be offset against each other's claims as follows:

Monetary Order in favor of the Landlord	\$703.45
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$57.98</b>

### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$57.98**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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*.

Dated: February 01, 2011.

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Residential Tenancy Branch