



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, MNR, FF, O

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlords applied for a monetary order for damage to the unit, for money owed or compensation for damage or loss under the Act, to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenants.

The Tenants applied for a monetary order for money owed or compensation under the Act or tenancy agreement, for the return of all or part of the security deposit, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlords to an Order for monetary relief?

Have the Landlords breached the Act or tenancy agreement, entitling the Tenants to an Order for monetary relief?

### Background and Evidence

The tenancy began on September 25, 2009, for a fixed term ending on September 30, 2010, monthly rent was \$1,000.00 and due on the first day of the month, and a security deposit of \$500.00 was paid on September 25, 2009.

The tenancy was for a fixed term to end on September 30, 2010; however I heard testimony from the parties that the Tenants vacated the rental unit on September 15, 2010.

**Landlords' relevant evidence considered:**

1. Written statements detailing each portion of the claim
2. The tenancy agreement
3. Advertising Receipt
4. Condition Inspection Report
5. Statement and tenancy agreement with the Landlord's current tenant
6. Utility bill
7. Email train between the Landlords and the Tenants
8. Receipt from a carpet care company
9. Written Notice of Final Opportunity to Inspect
10. Photos depicting the rental unit after the Tenants' vacancy

The Landlords' claim is for the following:

Damages to rental unit by Tenants	\$2,929.95
Utilities	\$142.97
Advertising of the rental unit	\$35.40
Additional expenses	\$275.20
Filing fee	\$50.00
<b>Total</b>	<b>\$3,690.02</b>

**Landlords' Testimony:**

The breakdown of the damages to the rental unit is \$6.03 for drywall spackle, \$150.00 for time required to conduct the repairs, \$20.00 for a steam cleaner rental, \$67.20 for a home design company, \$2,653.13 for carpet replacement, and \$33.59 for a cracked bedroom light fixture.

At the beginning of the testimony, the Tenants conceded owing several of the items on the Landlord's original application, more specifically \$87.20 for the steam cleaner and carpet care company receipts, seven hours of cleaning for \$179.55, \$6.03 for the drywall spackle, \$30.00 for one hour spent repairing, and \$142.97 for the utility bill.

In support of their claim, I heard testimony from the Landlords that the Tenants submitted a notice to end the tenancy, as of September 2010, and verbally requested that the Landlords attempt to find new tenants for September if possible.

I heard testimony that the Landlords did advertise the rental unit for occupancy in September and secured another tenant for mid September.

I heard testimony from the Landlords that they tried to secure a move out inspection time from the Tenants on September 15, but were unsuccessful in so doing. After discovering the Tenants had vacated on September 15, the Landlords testified that the rental unit was damaged and unclean, and that the carpet stained to the extent that cleaning would not remove the stain and that it needed replacing. The Landlords testified that due to the state of the rental unit, the new tenant was unable to move in until October 1, 2010.

I heard testimony from the Landlords that they tried unsuccessfully to arrange a move out inspection several times after the Tenants moved out, without success, and that they resorted to issuing a written Notice of Final Opportunity to Schedule a Condition Inspection, in person to the Tenants.

### **Tenants' Testimony:**

The Tenants withdrew their claim for a doubling of the security deposit as they acknowledged the Landlord filed an application for dispute resolution with the required time.

The main part of the Tenants' claim was from the Advocate's cross examination of the Landlords.

In cross examination, the Landlords stated that they decided to replace the carpet on September 20, 2010, but did not do so prior to the new tenant moving in.

The Landlords testified that they were also advised to not let anyone move in without offering the Tenants two chances for a move out inspection and that the Tenants did not respond to their requests.

I heard testimony from the Landlords that they believed the carpet needed replacing due to the carpet company's opinion that the underlay was diffused and the stain, especially in the living room, could not be lifted.

The Tenants testified that the positioning of the marks on the bedroom carpet appeared to be from the bed posts, and was a sign of wear and tear, if anything, and not damage from them.

The Tenants denied damaging the walls with excessive nail holes, testifying that they had only hung a key ring holder by the front door. The Tenants also denied causing the crack in the light fixture.

The Tenants' evidence and testimony indicated that they tried to arrange a move out inspection with the Landlords, but were unsuccessful.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss, in this case both parties, has the burden of proof to establish their claim on the civil standard:

**First** proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

### Landlord's Application

The Tenants conceded the owing \$445.75 for the steam cleaner and carpet care company receipts, seven hours of cleaning for \$179.55, \$6.03 for the drywall spackle, \$30.00 for one hour spent repairing, and \$142.97 for the utility bill. I find that the Landlords did not substantiate the necessity for cleaning of the rental unit in excess of seven hours and did not supply evidence there was a cost associated with repair. I find the amounts conceded by the Tenants to be reasonable under the circumstances and I **grant** the Landlords' claim for the items in the amount of **\$445.75**.

As to the Landlords' claim for carpet replacement in the amount of \$2,653.13, I accept that the Tenants left a stain in the living room, but I do not find it is the Tenants' responsibility for replacing the Landlords' carpet. I find the Landlords submitted insufficient proof of the extent of the damage of the stain. There was no statement from a carpet specialist indicating the carpet needed replacing or a statement of attempts at repairing the carpet. I find the receipt supplied by the carpet care company to be vague and inconclusive.

Therefore I find that the Landlord has not met the third part of the burden of proving damages as to the carpet replacement.

Residential Tenancy Branch policy suggests that a dispute resolution officer may, however, award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the Landlord for carpet damage and **grant** the Landlords the amount of **\$300.00**.

The Landlords would have to advertise the rental unit for October 2010, the next month after the legal end of the tenancy, and did secure a Tenant for that month. Therefore I find the Tenants are not responsible for the Landlords' advertising costs and **dismiss** their claim for **\$35.40**.

As to the Landlords' claim Additional Expenses for ferry fare, registered mail expenses, parking and photocopying, the *Act* does provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. Therefore I dismiss the Landlords' claim for Additional Expenses, with the exception of the filing fee. I therefore **grant** the Landlords the amount of **\$50.00**.

Therefore, I find the Landlords have established a total monetary claim of **\$795.75**, comprised of \$445.75 for the compensation conceded by the Tenants, \$300.00 for the nominal damage to the carpet, and the \$50.00 filing fee for the claim.

I order that the Landlords retain the deposit of **\$500.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$295.75**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Tenants' Application**

Section 45 (2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives notice, and is not earlier than the date specified in the tenancy agreement.

I find the Tenants were liable for rent until the end of September 2010, as per the terms of the tenancy agreement. I find the Landlords attempted to mitigate the loss for the Tenants by advertising the rental unit, but were unsuccessful in so doing due to the condition of the rental unit and the lack of a condition inspection. Therefore I find the Tenants are not entitled to one half of the rent for month of September and I **dismiss** their claim for **\$500.00**.

I find the Tenants are not entitled to a return of their security deposit as the Landlords were awarded a monetary order in excess of the security deposit.

### **Conclusion**

The Landlords are granted a monetary order for **\$295.75**.

The Tenants are not entitled to a monetary order.

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 08, 2011.

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Residential Tenancy Branch