



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution seeking a Monetary Order for damage to the unit, and to keep all or part of the security and pet damage deposit and to recover the filing fee.

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the Landlord established an entitlement to a monetary order for damage or loss and to keep all or part of the security deposit?

### Background and Evidence

This one year, fixed term tenancy began on August 15, 2009, continued thereafter on a month to month basis, ended on February 19, 2011, and the Tenants paid a security deposit of \$675.00 on July 23, 2009. The parties agree that the Tenant supplied his forwarding address on March 9, 2011.

The Landlord's claim is \$675.00, for having the rental unit carpet professionally cleaned and for damage to the carpet.

The Landlord submitted into evidence email communication between the Landlord and Tenant discussing issues with the carpet, a carpet cleaning receipt for \$184.60, dated February 18, 2011, a quote from a carpet company, dated March 3, 2011, indicating that a repair of the carpet would cost \$486.08, the tenancy agreement and the condition inspection report.

I note that the Landlord supplied a printed photograph of a pink stain in the carpet, but the Tenant stated he did not receive a copy of this in his evidence package. I therefore have declined to consider this photograph as it was not delivered to the respondent, in contravention of Residential Tenancy Branch Rules of Procedure 3.5.

The Tenant agreed that he would be responsible for the carpet cleaning bill in the amount of \$184.60.

In support of his application, the Landlord stated that the rental unit was not ready for a final inspection on February 17, 2011, when he picked up some of his furniture, as he was to be out of town by February 18, 2011. The Landlord submitted that his parents attended the move out inspection on February 18 as his representative, at which time the parents noticed stains in the main bathroom carpet.

The Landlord's parents agreed with the Tenant that he could attempt to clean the carpet stains himself and that another inspection would take place on February 19, 2011. According to the Landlord, the Tenant's rubbing of the carpet with the cleaner resulted in a permanent pink stain perhaps 3"-4" in size.

The Landlord submitted that he discussed the stain with the Tenant and that the Tenant agreed that he would be responsible for the stain, which the Landlord contends was verified by the Tenant asking the Landlord to obtain a quote for the damage.

The Landlord stated that removal of the stain was not an option, according to the carpet company and that the carpet required a repair.

Upon query, the Landlord stated that as of the day of the hearing, the carpet had not been repaired.

The Tenant, in response, stated that he agreed that the Tenants were responsible for the multiple black hair dye stains, which he removed during cleaning, but denied that they were responsible for the pink stain on the edging of the carpet leading to the bathroom.

The Tenant pointed to the fact that the hair dye stains numbered between 15 and 20 small spots, was a 0.5 cm stain as indicated on the condition inspection report, and that the pink stain was in a different location from the Landlord's description.

The Tenant pointed to the fact the carpet cleaning company's invoice was dated February 18, and mentioned permanent stains, and that the condition inspection report, dated February 19, mentioned a 0.5 cm hair dye stain, not a pink stain.

### Analysis

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

Awards for compensation are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicant/Landlord must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Despite having received a quote from a carpet company on March 3, 2011, the Landlord has taken no steps to remediate the carpet. I therefore find the Landlord submitted insufficient or any evidence to prove steps two and three, that he sustained a loss for the carpet stain and therefore could establish no value of the alleged loss.

In the absence of proof of a loss, I **dismiss** the portion of the Landlord's Application dealing with the carpet stain.

I accept the Landlord sustained a loss for carpet cleaning, per his testimony and evidence and the Tenant's agreement.

As the Landlord has been partially successful with his application, I award him a return of a portion of his security deposit, in the amount of \$25.00.

Conclusion

I find the Landlord has established a **monetary claim** in the amount of **\$209.60**, comprised of carpet cleaning of \$184.60 and \$25.00 for a partial filing fee.

I direct the Landlord to retain the amount of \$209.60 from the Tenants' security deposit in satisfaction of the claim and return the amount of **\$468.40** to the Tenants forthwith.

I **grant** the Tenants an order under section 67 of the Act for the amount of **\$468.40**.

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: June 27, 2011.

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Residential Tenancy Branch