



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

All parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

The parties have submitted a substantial amount of evidence, all of which I have reviewed which 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.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

### Background

The parties acknowledge there is no written tenancy agreement; however the parties do agree that this tenancy started in June 2003 and ended in October 2010. Monthly rent was \$900.00 and the Landlord collected a security deposit of \$450.00 at the start of the tenancy.

The original landlord was the Landlord's husband, who passed away in 2005. I heard testimony that the Landlord's son, the Tenants' witness, acted as agent for and on behalf of his father, collecting rents and dealing with landlord-tenant issues, until his father's death. At this time, the Landlord and her daughter, her witness, took over the landlord duties for the rental unit.

The Landlord's original claim is for a hole in the wall allegedly caused by the Tenants, new vinyl flooring, double sided tape used to determine the type of bugs and insects and for a return of the security deposit and interest which had been reimbursed to the Tenants. After the Landlord's handyman submitted a statement stating he would not

charge for repair of the hole in the wall, the Landlord acknowledged she was no longer requesting this amount.

The Landlord's claim is for the following:

Vinyl flooring	\$288.85
Double sided tape	\$75.71
Refund of penalty for security deposit	\$682.98
Filing fee	\$50.00
Mailing costs	\$49.96
<b>Total</b>	<b>\$1,097.54</b>

The Landlord's relevant evidence included a breakdown of costs explaining the claim, receipts for the vinyl flooring and associated costs, photos of the rental unit, research regarding snakes and exotic pets, and a statement from an exterminator about fumigating the rental unit. There was no move-in inspection report, and I have evidence of a move-out inspection, which I note was not properly completed or signed.

In support of the application, the Landlord's agent, her daughter, testified that, as the manager for the rental unit, she became aware in 2006 or 2007 that the Tenants were keeping exotic pets at the rental unit, including snakes. The Agent submitted that the Tenants had not informed or sought permission from the Landlord to house the exotic pets. Due to the presence of exotic pets, the Landlord's Agent submitted that the Tenants were responsible for fumigating the carpet in the basement as the pets were allowed to roam the carpeted floor, and had not done so.

The Landlord's Agent stated that it was necessary to buy double sided tape at the recommendation of their exterminator to determine the type bugs left in the rental unit as the exterminator was not allowed to treat the area without knowing the type of insect present.

The Landlord's Agent also submitted that due to the presence of the exotic pets and the lack of fumigation by the Tenants, it was necessary to replace the carpet, which in this case was replaced with vinyl flooring. Upon query, the Landlord's Agent stated that the carpet was ten years old, or it could be older or younger.

As to the security deposit, the Landlord's Agent submitted that the Landlord had to rush out of the country on a family emergency and was not able to pay the security deposit within fifteen days. Due to this, the Landlord's Agent stated that the written demands of the Tenants to return double their security deposit led the Landlord to pay the Tenants double their security deposit of \$450.00, plus interest. The Landlord is claiming for a return of \$450.00 of the penalty amount paid to the Tenant, plus \$250.00 paid to a prior tenant.

The Tenant submitted the Landlord is not entitled to a return of any portion of the security deposit as the Landlord had sufficient time to refund the security deposit prior to leaving the country.

The Tenant submitted that the carpet did not require fumigation as the Tenants had three corn snakes in a glass cage, not on the carpet, and that at any rate, the snakes were gone by 2009.

The Tenants submitted a statement from the exterminator that the bugs in question appeared to be sow bugs, which is a moisture bug usually living in cement foundations.

The Tenants submitted a receipt of a steam cleaner rental, which he testified was used to steam clean the carpet, which would kill any mites which may have been in the carpet. The Tenant also submitted a statement from the Landlord's handyman, which stated that he informed the Landlord that the carpet was in "perfectly good condition and did not need to be replaced."

The Tenant submitted that the Landlord's son was aware that the Tenants had snakes in the basement, as did the Landlord's agent. The Tenant submitted that he was informed that the carpet was 15-20 years old.

The Landlord's son and Tenants' witness testified that he represented his father, the original landlord, at the beginning of the tenancy due to his proximity to the rental unit. The witness stated that the rental unit was in poor condition when the Tenants moved in and that over the years, the Tenants made the rental unit clean and presentable.

The witness stated that the carpet was 15-20 years old and was placed directly on a subfloor, where moisture will create bugs.

The witness stated that the carpet was cleaned and as he did the final walk through, the Tenants left the rental unit in good shape.

The witness confirmed that the snakes were gone two years ago.

### Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As to the Landlord's claim that the carpet needed replacing, Residential Tenancy Policy Guideline 37 provides that the useful life of carpet is 10 years. I find that on a balance of probabilities that the carpet was at least fifteen years old and was fully depreciated. In addition, I find that the Landlord submitted insufficient evidence that the carpet needed replacing or that the Tenants damaged the carpet. I therefore **dismiss** the Landlord's claim for vinyl flooring.

As to the double sided tape, I find that the Landlord submitted insufficient evidence that the Tenants caused an insect problem and I dismiss her claim for double sided tape.

As to the claim for a return of the penalty part of the security deposit, the Landlord knew the Tenants' forwarding address and did not return the Tenants' security deposit within fifteen days of the end of the tenancy. Therefore the Landlord became 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 and pet deposit and the landlord must pay the tenant double the security deposit. I therefore find that the Landlord has failed to prove an entitlement to a return of any portion of the security deposit and I **dismiss** her claim for its return.

As to the Landlord's claim for registered mail expenses, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore **dismiss** her claim for reimbursement of registered mail expenses.

As I have found that the Landlord has submitted insufficient evidence to support any portion of her claim, I **dismiss** her application in its entirety.

As I have dismissed the Landlord's application, I decline to award her the filing fee.

### Conclusion

The Landlord's Application is dismissed.

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 03, 2011.

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Residential Tenancy Branch