



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*MND, MNDC, MNSD, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of replacing the carpet and reseeding the lawn. The tenant applied for the return of the security deposit and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover the cost of repairs? Is the tenant entitled to the return of her security deposit and the filing fee?

### **Background and Evidence**

The tenancy started on May 01, 2010 for a fixed term of six months and continued as a month to month tenancy. The monthly rent was \$1,000.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$500.00. The house was newly constructed and the tenant was the first occupant of the rental unit in the basement. The landlord lived upstairs. The tenant moved in with one dog and acquired a second dog in September 2010. The tenant did not pay a pet deposit.

The landlord stated that he was getting increasingly suspicious about the tenant's dogs urinating on the carpets due to the odour and the stains on the carpet in the common area. On December 09, 2010, the tenant served the landlord with notice to end the tenancy and moved out on January 31, 2011. On that day the tenant gave the landlord her forwarding address. The landlord asked the tenant if there were any pet urine stains on the carpet and she told him that there were none. After the tenant moved out the landlord found a strong odour in the unit and lifted the carpets to check for stains.

The landlord filed photographs that depict heavy staining on the underside of the carpet and on the underlay. The landlord contacted the tenant to discuss the damage and she advised him to file a claim.

The landlord is claiming the following:

1.	Deodorizer	\$43.55
2.	Carpet replacement	\$2,197.60
3.	Reseed lawn	\$483.84
	Total	<b>\$2,724.99</b>

### **Analysis**

#### **Landlord's application:**

Based on the verbal testimony and the documentary evidence, I find that on a balance of probabilities, the tenant's pets caused damage to the carpets and left behind a strong odour of pet urine. I find that the landlord is entitled to the cost of the deodorizer.

The landlord has filed a quotation for \$2,197.60 to replace the carpet in the entire basement. However, sometime during the tenancy, the carpet in one bedroom was damaged due to a water leak. Therefore the tenant is not responsible for the cost of replacement of the carpet in this bedroom. The landlord has filed a quotation for \$2,197.60 to replace the entire three bedroom suite. I find that the approximate cost of replacing two thirds of the unit is \$1,465.06.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpets is ten years. The rental unit was new at the time the tenant moved in and therefore at the end of the tenancy had approximately nine years of useful life left. Accordingly, I find that the landlord is entitled to \$1,318.50 which is the approximate prorated value of the remainder of the useful life of the carpet.

The tenant denied any damage to the lawn by her pets. The landlord did not file any evidence to support his testimony that the lawn was damaged by the tenant's pets. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Therefore I find that the landlord has not proven his claim for \$483.84 for repair to the yard.

The landlord has established the following claim:

1.	Deodorizer	\$43.55
2.	Carpet replacement	\$1,318.50
3.	Reseed lawn	\$0.00
	Total	<b>\$1,362.05</b>

### **Tenant's application**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Pursuant to section 38 (4) a landlord may retain an amount from a security deposit if at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find the landlord failed to obtain an agreement from the tenant in writing to deduct a portion of the deposit. He also failed to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit in the amount of \$1,000.00. Since the tenant has proven her claim, she is entitled to the recovery of her filing fee of \$50.00.

Overall the landlord has established a claim for \$1,362.05 and the tenant has established a claim for 1,050.00. I will use the offsetting provisions of section 72 of the Act to grant the landlord a monetary order in the amount of \$312.05. I grant the landlord an order under section 67 of the *Residential Tenancy Act*, for this amount. 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*.

Dated: June 09, 2011.

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Residential Tenancy Branch