



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF  
                                 MNSD FF

### 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, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord.

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

### Issue(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 to obtain a Monetary Order 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 to obtain a Monetary Order as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement that began on November 1, 2007 and ended February 27, 2011. Rent was payable on the first of each month in the amount of \$670.00 and on October 22, 2007 the Tenant paid \$325.00 as the security deposit. A move in inspection report was

completed November 1, 2007 and the move out report was completed February 27, 2011. The Tenant provided his forwarding address to the Landlord when it was written on the move out inspection form February 27, 2011.

The Landlord testified he has rented this house for the past 31 years and he rents out the suite that is located in approximately 1/3 of the basement. The remaining 2/3 of the basement plus the upper level is occupied by the Landlord and his family. He is responsible to look after minor things relating to the suite and the owner looks after the major repairs. The suite has always been rented out the entire length of his 31 year tenancy. When asked what major repairs or renovations have been done to the suite over the years the Landlord advised there has been no renovations however there was a requirement for some electrical rewiring for the bathroom and there were two incidents of water pipes breaking where the pipes were repaired.

The Landlord is seeking monetary compensation for damage to the unit which is comprised of the following:

- 1) \$60.45 for the cost to rent a steam cleaner and products to clean the carpets. This was completed March 1, 2011. He advised that although the Tenant brought in a rented steam cleaner they did not see or smell any cleaning solutions and so they suspect he cleaned the carpet with only water. The carpets were still stained and what appeared to be bleached when the Tenant used a solvent to remove the bicycle grease off the carpet.
- 2) \$32.47 to replace the kitchen blind that was replaced March 4, 2011. The Landlord made reference to the move out inspection report provided in his evidence in support of this claim.
- 3) \$36.91 to replace the torn dryer lint filter. The dryer is approximately 15 to 20 years old and is shared with the Landlord's family and the Tenant. He states the Tenant left debris in the dryer that caused the screen to become torn.
- 4) \$10.98 for Canada Post costs to send the hearing documents and evidence to the Tenant as supported by the receipt in evidence.
- 5) \$25.52 for the cost to develop photographs used as evidence for this dispute as supported by the receipt provided.
- 6) \$1,035.84 which is the estimated cost to replace the carpet in the bedroom and hallway. When asked the age of the carpet the Landlord responded "in its current configuration" the bedroom carpet is approximately 8 years old and the hallway carpet is approximately 10 years old. I clarified my question and asked regardless of the current configuration, how old is the carpet to which the Landlord gave the same ages as listed previously. He states the Tenant conducted bike maintenance inside the suite which caused the carpet to be soiled with grease. He alleged the Tenant ruined the carpet when he

attempted to remove the grease with a solvent causing the color to be bleached. He stated that while they could have paid professional cleaners to attempt to remove the stains they would not have been able to alter the coloring.

- 7) \$50.00 for the recovery of the filing fee.

In response to the Landlord's claim the Tenant testified the carpet was older than what the Landlord stated because it was used before they installed it and there was a big square patch in the middle of it. He states he cleaned the carpets February 26, 2011 and most of the stains came out. He admits that there was some staining still on the carpet when he finished. He argued that since the carpet has not been replaced then it is still in useable condition as the suite is occupied now.

The Tenant admitted responsibility for the cost to replace the kitchen blind. He advised he went to open it one day and it just broke. He does not accept responsibility for the dryer repair as they did not have proof that he left debris in the dryer and the damage is not listed on the move out inspection report.

His application was for return of double his security deposit because the Landlord failed to make his application within the required time frames. He is also seeking recovery of the \$50.00 filing fee.

I asked the Landlord if the carpet was used prior to being installed in this unit. He confirmed it was approximately 5 years old before they purchased it; however it was good quality carpet. When I reminded the Landlord that he was providing affirmed testimony and I asked for clarification on the age of the carpet that was provided earlier in the testimony the Landlord confirmed the actual age of the bedroom carpet to be approximately 13 years and the hallway carpet to be approximately 16 years old.

The Landlord confirmed the new Tenant was given the keys to the unit March 2, 2011, the same date they did the move in inspection. He confirmed the photographs provided in his evidence were taken on the dates that are stamped on the photos. He advised there was one email he did not include in his evidence which relates to the damage caused to the carpet where the Tenant responded "I will accept the stains are damage to the carpet".

The Tenant confirmed he sent the e-mail stating the stains were damage however the carpet was very old to begin with and it came pretty clean afterwards as supported by his photos. He advised the photos he provided in evidence were taken February 27, 2011.

## Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of: the tenancy agreement; the move in and move out inspection reports; receipts, an estimate, and photographs submitted by both parties.

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**

When I asked the Landlord what the age was of the carpet and he prefaced the age by stating "in its current configuration" I questioned him further making sure to clarify that I was seeking the actual age of the carpet. It was after the Tenant testified that the carpet was purchased as used carpet that the Landlord testified the carpet was approximately 13 and 16 years old. I note at the outset of the hearing the Landlord testified there were no renovations done to the rental unit during his 31 year tenancy and he did not mention the carpet being replaced when I asked if there were any major repairs done to the suite.

Based on the aforementioned a significant factor in my considerations is the credibility of the Landlord. I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

Section 32(3) of the Act provides that 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.

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.

In the absence of credible evidence to prove the age of the carpets I find the carpets to be of an age that has exceeded their normal useful life. That being said I accept that the carpets were in useable condition at the onset of the tenancy and that there was staining caused to the carpet during the tenancy. I further accept that the staining was not removed when the Tenant steam cleaned them causing the Landlord to have to re-clean the carpets.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord is entitled to nominal damages relating to the carpet and I award the Landlord **\$60.45**, the amount paid to have the carpets re-cleaned less the \$10.00 deposit fee that was returned.

As per the aforementioned, the carpets have not been replaced and they have surpassed their useful life. Therefore I find there to be insufficient evidence to support the Landlord’s claim for costs to replace the carpets, and his claim of \$1,035.84 is dismissed without leave to reapply.

The Tenant has accepted responsibility for the claim of \$32.47 for the kitchen blind replacement. Therefore I award the Landlord **\$32.47**.

The Landlord is seeking compensation for a dryer vent screen that has surpassed its useful life and relates to a dryer that is shared between the Landlord and Tenant. Upon careful review of the evidence I find there to be insufficient evidence to support the Tenant caused the damage to the vent screen. Therefore the claim of \$36.91 is hereby dismissed, without leave to reapply.

In relation to fees for registered mail and photo development (\$10.98 + 25.52), I find that the Landlord has chosen to incur costs that cannot be assumed by the Tenant as there are other means to conduct service or present evidence that may be cheaper or at no cost at all. The dispute resolution process allows an Applicant to claim for compensation

or loss as the result of a breach of Act. Therefore, I find that the landlord may not claim postal and photograph development fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and I dismiss the \$36.50 (\$10.98 + 25.52) claimed, without leave to reapply.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

**The total amount awarded to the Landlord is \$117.92** (\$60.45 + 32.47 + 25.00).

### **Tenant's application**

The evidence supports that the tenancy ended February 27, 2011, pursuant to section 44(1)(d) of the Act that stipulates a tenancy ends when a tenant vacates the rental unit. The move out inspection was conducted and the keys were returned February 27, 2011. The Tenant provided the Landlord with his forwarding address on February 27, 2011.

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 in full or file for dispute resolution no later than March 14, 2011. The Landlord did not make his application until March 15, 2011. I note the Landlord filed his application through the online application process which is accessible twenty four hours a day, seven days a week.

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 now 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 security deposit.

Based on the aforementioned I find that the Tenant has met the burden of proof and I approve his claim for the return of double his security deposit plus interest in the amount of **\$655.69** (2 x \$325.00 + \$5.69 of interest).

I find that the Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

**Total amount awarded to the Tenant is \$705.69** (\$655.69 + 50.00)

**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 Tenant	\$705.69
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$587.77</b>

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$587.77**. This decision and Order are legally binding. The Order must be served on the respondent Landlord.

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 29, 2011.

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Residential Tenancy Branch