



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenants for this application.

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

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof to retain the security deposit for damages suffered as a result of this tenancy.

### Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement that began on March 1, 2011. Rent was payable on the first of each month in the amount of \$750.00 and on February 22, 2011 the Tenants paid \$375.00 as the security deposit. On May 31, 2011 the Tenants provided written notice to end their tenancy effective June 30, 2011. The Tenant provided his forwarding address to the Landlord in writing sometime in early July 2011.

The Landlord affirmed that they are seeking to retain the security deposit to cover the cost of carpet cleaning and cleaning of the rental unit. He did not have copies of all the evidence that was provided to the *Residential Tenancy Branch* as he was not the manager at the time this tenancy ended. He testified that the move out inspection report was signed on June 30, 2011 in the absence of the Tenants. Notices for attending the move out inspection were posted on June 21, June 27, and the final notice was posted July 15, 2011.

The Tenant affirmed they take responsibility for the carpet cleaning as charged on the move out inspection report form at \$90.00 but that he does not accept the charges for cleaning the unit at \$75.00 as they cleaned the entire unit before moving out. Also, he states the previous building manager instructed him to patch the hole in the wall from the cable and that the Landlord would provide the materials to finish repairing it and painting it therefore he does not agree to the charges noted on the move out inspection report of \$100.00 for painting and \$40.00 for repairs. In closing he agrees to the \$90.00 carpet cleaning and wants the remainder of his deposit returned.

The Landlord advised he found the carpet cleaning receipt which indicates they paid \$97.50 to have the carpets cleaned on July 17, 2011.

### Analysis

The Tenant accepts responsibility for \$90.00 of carpet cleaning as claimed on the move out inspection report form. The Landlord did not provide a copy of the carpet cleaning receipt as proof of the amount paid therefore I award the Landlord **\$90.00** for carpet cleaning.

When making an application to retain the security deposit pursuant to section 67 of the *Residential Tenancy Act*, the person making the application has the burden to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove damages occurred, further cleaning of the rental unit was required, and to provide evidence the repairs were completed. Accordingly, the only evidence before me that the work was performed was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof. Therefore I dismiss the remaining items being claimed by the Landlord.

The Landlord has only been partially successful with his application; accordingly I award recovery of **\$25.00** of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Carpet cleaning	\$90.00
Filing Fee	<u>25.00</u>
<b>SUBTOTAL</b>	<b>\$115.00</b>
<b>LESS:</b> Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
<b>Offset amount due to the Tenants</b>	<b><u>\$260.00</u></b>

The Landlord is HEREBY ORDERED to return the balance owing of the security deposit in the amount of **\$260.00** forthwith.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$260.00**. This Order is legally binding and must be served upon the 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: October 26, 2011.

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Residential Tenancy Branch