



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the rental unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on July 1<sup>st</sup>, 2010 and ended June 30<sup>th</sup>, 2011. The rent was \$1175.00 per month and the tenants paid a security deposit of \$587.50. Condition inspection reports were completed at the start and the end of the tenancy.

B.G, agent for the landlord, testified that she did not complete the condition inspection reports; she clarified that a property manager did the move-out inspection with the owners, and that she is submitting the results at this hearing. It should be noted that the reports are rather convoluted and overcrowded with details. Both parties however agreed to the general consensus that the comments circled, whether on the move-in or the move-out portion, pertain to the condition of the unit at the end of the tenancy. B.G. testified that there were small cigarette burn holes in the carpet and the linoleum. She said that this was a non-smoking tenancy agreement, and that the entrance to the living room area needed to be repainted due to the smell of cigarettes.

In her documentary evidence, the landlord provided 19 photographs in support of his claim, showing in part two or three holes from cigarette burns in portions of the linoleum and carpeting.

The landlord submitted a monetary claim as follows:

- Cleaning supplies:	\$ 11.87
- Paint and supplies:	\$ 115.56
- Drain pipe:	\$ 3.68
- Garbage and recycle bin:	\$ 29.27
- Missing central vacuum parts:	\$ 30.47
- Gas heat service bill:	\$ 144.48
- Carpet/lino replacement:	\$1150.86
- Filing fee:	\$ 50.00
- Total:	\$1536.19

B.G. stated that she did not know the age of the carpets or the linoleum. Concerning the gas invoice, B.G. stated that the tenant did not sign up with Terasen. The call was made assuming that there was a problem with the hot water tank; however it was then discovered that the tenant had been disconnected for not paying his gas utilities. B.G. stated that this call could have been avoided if the tenant had called Terasen at the start of the tenancy.

The tenant testified that he never smoked inside the house; he said that perhaps on 6 occasions guests were allowed to smoke outside, and clarified that the entrance to the living room area subject to the claim was adjacent to the outside smoking area, and agreed that it is quite possible that the smell of cigarettes could permeate inside that area. The tenant stated that he did not participate in the move-out inspection and chose to wait outside; he said that the property manager informed him of the cigarette holes, and that he did not disagree with that report. He did state however, that the condition inspection report is silent concerning holes in the linoleum, which according to the tenant was already heavily stained. The tenant said that he could not address the missing parts to the central vacuum system as it is not in the condition inspection report, and that he used his own vacuum cleaner during the tenancy. Concerning the gas service call, he said that he was not aware that the hot water tank was on gas and believed that according to the tenancy agreement, the gas issue only pertained to his decision to use the fireplace. He stated that he never received an invoice from Terasen, and that he was eventually cut off. He said that he called concerning the hot water tank under the belief that there was a problem, but discovered that he had been

disconnected for unpaid utilities. The tenant said that he paid the arrears and that Terasen re-connected the gas line. The tenant said that the broken drain pipe may have occurred while mowing the lawn, and also agreed that additional cleaning supplies may have been required to clean the tub surround. The tenant did not dispute that the garbage and recycle bins were stolen and needed replacing.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* also states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Upon careful review of the condition inspection reports, I note the condition of the rental unit at the onset of the tenancy indicates the presence of some damages, and of a unit with significant wear and tear. B.G. could not provide an age for the carpets and the linoleum, but the oral evidence suggests that they were near or past their useful life of 10 years set out by the *Residential Policy Guidelines*. B.G. did not complete the condition inspection reports and therefore I find these reports of little probative value. The landlord seeks to recover the cost of new carpeting and linoleum by producing photographs showing three of four cigarette burn marks. I find that the landlord has not proven that the flooring was irreparably damaged, or that the claim for new flooring is compatible with the landlord's statutory obligation to minimize his loss. I do accept however that the cigarette burn marks were caused by the tenant and I grant the landlord nominal compensation of \$200.00 towards this aspect of the claim.

Concerning the Terasen invoice, there was an ambiguity in the tenancy agreement, which was only clarified when a service call was made and the tenant discovered that

the hot water tank was, like the fireplace, on gas. B.G. could not provide clarification as to any discussions during the signing of the tenancy agreement; what I do have is the tenant's testimony that he paid the gas arrears and continued to pay his utilities thereafter. I find in the circumstances that the ambiguity in the tenancy agreement must be resolved in favour of the tenant and I dismiss this aspect of the landlord's claim.

The tenant agreed that although he and his guests smoked outside, due to its proximity cigarette smell could conceivably penetrate the unit and I award the landlord recovery for repainting the entrance area to the living room for \$115.56.

The tenant agreed to the broken down pipe and the additional cleaning required to the surround tub areas; accordingly I award recovery for these costs of \$3.68 and \$11.87 respectively. The tenant did not dispute the loss of garbage containers and I award the landlord the replacement cost of \$29.27.

Concerning the missing parts to the central vacuum system, they were not included in the condition inspection reports and I dismiss this aspect of the landlord's claim.

### Conclusion

The landlord established a claim of \$360.38. Since the landlord was partially successful, I grant the landlord partial recovery of the filing in the sum of \$25.00 for a claim totalling \$385.38.

I authorize the landlord to deduct \$385.38 from the \$587.50 security deposit for a balance owing of \$227.12 to the tenant. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum of \$227.12.

This Order may be registered 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: October 17, 2011.

---

Residential Tenancy Branch