



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

During the hearing I identified the landlord had not provided me with a copy of the receipt for carpet cleaning. The tenant testified that she had not received a copy either. The landlord's agent testified that he had provided the tenant with the same package that he had provided the Residential Tenancy Branch (RTB) and it included the receipt for carpet cleaning.

I allowed the landlord to fax the invoice to me. I advised both parties that I would first consider whether or not I could rely on this evidence or if I would consider it not submitted in time for this hearing.

Upon further review of the files (both electronic and physical) I note the RTB recorded on November 4, 2011 the receipt of 11 pages of evidence from the landlord. Of that evidence 4 pages were of the move in Condition Inspection Report; 4 pages were of the move out Condition Inspection Report; 1 page was an invoice for 5 hours of cleaning and supplies; and 2 pages were of a tenant ledger for a total of 11 pages.

As a result of my review of the file and in conjunction with the tenant's testimony, I find the landlord failed to serve the tenant and the RTB with the receipt for carpet cleaning and I have made this decision without considering it .

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on July 23, 2011 for a 1 year fixed term tenancy that began on August 1, 2010 and converted to a month to month tenancy on August 1, 2011 with a security deposit of \$600.00 paid.

The landlord's agent provided testimony that ½ of the security deposit was credited, as partial payment to the landlord in a previous decision for unpaid rent leaving a balance of \$300.00 in the security deposit. The tenant did not dispute this testimony.

The landlord's agent testified that he was seeking, in part, a monetary order for the \$600.00 rent owed that he was previously granted a monetary order for against a different named respondent from this same tenancy.

The agent testified also that the tenants vacated the rental unit on September 1, 2011 just after the new tenants were supposed to move in. The tenant testified that the agent had originally agreed to allow the tenant to move out and clean up by September 2, 2011 but this got changed on the morning of September 1, 2011 when the tenant states the agent informed her she had to be out by noon on September 1, 2011.

The tenant has submitted a typewritten transcript of text messages between her the landlord's agent. The tenant did not provide copies of the actual messages.

The transcript provided by the tenant shows the landlord's agent was trying to establish a time to complete a move out condition inspection. The tenant responded on August 31, 2011 by stated everything will be done by noon the following day. The agent then suggests the inspection could be completed either at 9:30 on September 1 or September 2, 2011 as the new tenants would be moving in on September 2, 2011.

The tenant responded to these text messages by indicating September 2, 2011 will be acceptable to complete the inspection. Further text message transcripts from September 1, 2011 indicate the new tenants want to move in on September 1, 2011 and the landlord states that the walk through will need to be completed at 12:30 on September 1, 2011.

The tenant testified that had they had until the September 2, 2011 for the walk through they would have completed all the cleanup of the rental unit, including completing the carpet cleaning, as they had already rented a carpet cleaner from a local grocery store.

The tenant also asserts the landlord never once specified that the carpets needed to be professionally cleaned and that they were not allowed to do it themselves by renting a machine from the local grocery stores, until the conversation with another of the landlord's agent on September 1, 2011.

The landlord's agent testified that as a result of the condition of the rental unit the agent hired to the new tenants to complete the cleaning of the rental unit for a period of 5 hours at \$25.00 per hour.

The tenant testified further that the Condition Inspection Reports submitted by the landlord also show that the carpet at the start of the tenancy had stains in them as well as at the end of the tenancy and as such the tenant should not be responsible for carpet cleaning.

The landlord seeks compensation as outlined in the following table:

Description	Amount
Rent	\$600.00
Cleaning	\$280.00
Cleaning Supplies	\$28.29
Carpet Cleaning	\$133.28
<b>Total</b>	<b>\$1,041.57</b>

During the hearing the tenant pointed out that the landlord's invoice for cleaning and cleaning supplies identified cleaning in the amount of \$165.00 and \$18.70 supplies and \$19.80 HST for cleaning only for a total of \$203.50. The landlord acknowledged that his claim should be corrected to the \$203.50 amount.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

*Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7<sup>th</sup> Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

As per the landlord's testimony the matter of outstanding rent has been determined through a previous hearing and as such I find the matter is *res judicata* and I dismiss this portion of the landlord's Application.

Section 37 of the *Act* requires that unless agreed upon the tenant must vacate a rental unit by 1:00 p.m. on the day the tenancy ends and to leave the unit reasonably clean. As per the testimony that both parties agreed to that the tenants had provided notice that the tenancy would end on September 1, 2011, I find the tenants had until 1:00 p.m. on September 1, 2011 to vacate the rental unit.

While the tenant's transcript of the text messages does not provide any copies of the actual text messaging, I find that from the wording used in the transcript the landlord is only trying to schedule a move out condition inspection for either September 1 or 2, 2011 and not authorizing the tenants to have occupancy any later than the original agreed upon September 1, 2011.

As such, I find the tenants failed to comply with the requirements under Section 37 to vacate the rental unit. Further, from the testimony provided by both parties I find the tenants failed to leave the rental unit reasonably clean and therefore the landlord has suffered a loss resulting from a violation of the *Act*.

I accept, from the testimony of both parties, that the rental unit required 5 hours of cleaning. However, I note that in the landlord's invoice for cleaning he stipulates he paid the cleaners (new tenants) \$25 per hour for 5 hours for a total of \$165.00. My calculations show that at this rate for this time period the total amount should be \$125.00 plus 12% HST for a total of \$140.00 plus \$18.70 for supplies.

As to the carpet cleaning, I accept the tenant's position that the Condition Inspection Reports indicate the carpets at both the start and end of the tenancy were stained, however I also note that from the move out condition inspection report there are fewer mentions of staining than from the move in condition inspection report.

As such, I find the landlord has failed to establish that this tenant should be held responsible for carpet cleaning and I dismiss this portion of the landlord's Application. I also note that there is no requirement under the tenancy agreement submitted that stipulates the tenant must have the carpets cleaned or by any specific method.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$183.70** comprised of \$158.70 cleaning and supplies and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful in his Application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$300.00 in satisfaction of this claim leaving a balance of 116.30 in the security deposit to be returned to the tenant.

I grant a monetary order to the tenant in the amount of **\$116.30**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 29, 2011.

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Residential Tenancy Branch