



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MND MNR

### Introduction

This hearing dealt with (a) an application by the tenant for a monetary order; and (b) an application by the landlord for a monetary order. Both parties attended the meeting and had an opportunity to be heard.

### Issues(s) to be Decided

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began on May 1, 2010 and ended on August 5, 2011. The rent was \$900.00 per month. The tenant paid a security deposit of \$450.00 at the start of the tenancy. Condition inspection reports were not completed upon move-in or move-out. A form entitled "Security Deposit Refund" was submitted into evidence. This form is a version of a move-out report but does not comply with the Act and Regulations. The tenant provided the landlord with her forwarding address in writing on August 5, 2011. The tenant did not consent in writing to the landlord keeping all or any part of her security deposit. The tenant has not yet received back any of her deposit.

According to the landlord, the tenant still owes \$200.00 in rent for the month of July and due to her over holding into August, became liable for the rent for August. As well, the landlord claims that the tenant's cat damaged the carpet to such a degree that it needed to be replaced and that the walls had to be re-painted due to several large stains on the walls that the landlord was unable to remove. The landlord also claims that the unit was left generally dirty and required extensive cleaning.

The tenant submitted several photographs of the unit after move-out. The landlord provided no photographs. The landlord submitted invoices for the carpet replacement, cleaning and painting.

### Analysis

Tenant's Claim

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord did neither. It is true that the landlord filed an application against the tenant on September 23, 2011 but this was well outside of the fifteen day time limit for claiming against a deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit. Accordingly, the tenant in this case is entitled to a monetary order against the landlord in the amount of \$900.00.

Landlord's Claim

The landlord has made a monetary claim against the tenant comprised of the following:

Unpaid rent for July	\$200.00
Unpaid rent for August	\$900.00
Carpet replacement	\$1,317.40
Cleaning	\$270.48
Painting	\$980.00
TOTAL	\$3,667.88

As a general principle, when making a claim of this nature, the burden of proving the claim is on the claimant both as to liability and quantum. In other words, a claimant must first prove that the respondent is responsible for the damage or loss and then, having proved that, must then prove the amount of that loss. The claimant must prove the claim on a balance of probabilities. On this basis, I will consider each of the above claims in turn

*Unpaid rent for July (\$200.00)* – The tenant admitted liability for this claim at the hearing.

*Unpaid rent for August (\$900.00)* – the landlord has claimed rent for August on the basis that the tenant did not vacate the rental unit until August 5<sup>th</sup>. This tenancy came to an end pursuant to an order of possession that was made against the tenant. The effective date of the order was July 31, 2011 and was served on the tenant in June. The tenant disputed this claim at the hearing saying that she “only had four days to move out.” The tenant did not deny however that she was served with the order of possession in June. While I understand that the tenant was under a great deal of pressure at the end of her tenancy, when she overheld into August she became liable for the August rent. As a result, I am satisfied that the landlord has established this portion of the monetary claim.

*Carpet replacement (\$1,317.40)* – The landlord claims that the tenant’s cat did irreparable damage to the carpet. According to Ms. R, the smell of cat urine was overwhelming when they did the steam cleaning of the rug. The landlord claims that the urine penetrated the rug in so many different areas of the unit that the whole carpet had to be replaced. The landlord believes the rug was about 5 - 7 years old. The landlord pointed to the tenant’s own photographs of the rug to show several stained areas. For her part, the tenant denies that she is responsible for the rug and noted that the landlord never said anything about cat smells when they did the walk-through on August 5<sup>th</sup>.

Given the contradiction in the parties’ testimony as to the condition of the rug, I am not satisfied that the landlord has provided sufficient evidence in support of this claim. In the absence of a move-in condition inspection report or photographs to show the original condition of the rug at move-in, it is impossible for me to determine whether the tenant is responsible for the damage claimed. Accordingly, I am not satisfied that the landlord has proved this portion of the claim.

*Cleaning (\$270.48) & Painting (\$980.00)* – The landlord claims that the tenant did not leave the rental unit reasonably clean as required by Section 37 of the Act and that as a result, the walls had to be re-painted and the whole unit professionally cleaned. The tenant disputes the landlord’s claim and says that there were not stains on the walls and that she did adequately clean the unit. Once again, given the contradiction in the parties’ testimony on this point, the burden falls back on the landlord to provide additional evidence in support of the claim. As stated above, the landlord has not provided any photos of the rental unit prior to the start of the tenancy and there is no move-in condition inspection report against which to judge the move-out condition of the unit. As a result, I am not satisfied that the landlord has proved these claims.

### Conclusion

I have found that the tenant has established a monetary claim in the amount of \$900.00 and that the landlord has established a monetary claim in the amount of \$1,100.00. When these two findings are offset against each other, the tenant still owes the landlord \$200.00.

I therefore order the tenant to pay to the landlord the sum of \$200.00. This order may be filed in 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*.