



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is an application for a monetary order for \$2100.00 and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The applicant testified that:

- This was a no smoking rental unit, however the respondent was smoking heavily in the unit and as a result she was concerned that her insurance would not cover damage should a fire occur, and therefore she decided to end the tenancy.
- She did not give the tenant a Notice to End Tenancy for smoking however she decided to give her a two month Notice to End Tenancy for landlord use as she was intending to move back into the rental unit.
- As a result of the two months notice the tenant was given her last month rent free as required by the Residential Tenancy Act, however since the real reason for ending the tenancy was due to the smoking she believes the tenant should now pay back that free months rent.

- The tenant also destroyed the carpet in the rental unit as it had numerous cigarette burns and had an extreme smoke smell. As a result she had to replace the carpet which was only five years old.
- The walls and ceilings in the rental unit were so badly smoke stained that they would not come clean and as a result she had to repaint all the walls and ceilings.
- She has provided numerous witness statements that support her claims that the rental unit was badly smoke damaged and the carpets were burned.

The applicant is therefore requesting an order as follows:

October 2010 rent	\$806.00
Replace carpet- materials	\$415.30
Replace carpet- labour plus GST	\$356.92
Paint	\$302.07
Painting labour	\$219.81
Filing fee	\$50.00
Total	\$2150.10

The respondent testified that:

- she was not evicted for smoking, she was given a two months notice for landlord use, and therefore the landlord was required to compensate her one month's rent.
- She never smoked in the rental unit, and the only smoking that ever occurred in the rental unit was one occasion when her brother smoked in the unit.

She does not believe that any of the landlords claim is justified and asks that it be dismissed.

### Analysis

It is my decision that I will allow a portion of the amount claimed by the landlord.

I will not allow the landlords claim for payment of the October 2010 rent, because the landlord did serve the tenant with a two months notice to end tenancy for landlord use and therefore was required to compensate the tenant the equivalent of one month's rent.

The landlord claims that the real reason for ending the tenancy was due to the smoking, however no such Notice to End Tenancy was ever given to the tenant and therefore the landlord is bound by the two month Notice that she did give.

It is my finding that the landlord has provided ample evidence to show that the tenant did smoke in this rental unit and that the rental unit was left in need repainting and the carpet needed replacing.

I will allow a one half of the cost of replacing the carpet, because carpets have an expected useful life of 10 years and therefore since these carpets were five years old they are considered 50% depreciated by normal wear and tear.

Therefore the total amount I allow for replacing the carpet is as follows:

50% of material costs	\$207.65
50% of labour	\$170.46
Total	\$378.11

I will not allow any of the landlord's charges for painting however, because it's reasonable to expect to have to pay to rental unit approximately every three years and therefore even if the tenant had not been smoking in the rental unit the landlord could expect to have to repaint.

I will allow the request for recovery of the \$50.00 filing fee because I have allowed a portion of this claim.

### Conclusion

I have issued an order for the respondent to pay \$428.11 to the applicant.

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 14, 2011.

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Residential Tenancy Branch