



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNDC, 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, her witness and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation for damage or loss; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on May 1, 2010 as a month to month tenancy for a monthly rent of \$750.00 due on the 1<sup>st</sup> of each month and that a security deposit of \$375.00 was paid. The tenancy ended on August 6, 2011 and the security deposit was dealt with in a previous hearing.

The landlord provided a copy of a move in Condition Inspection Report showing the condition at the start of the tenancy and a list of items recording the condition of the unit at the end of the tenancy. While the Report for the move in condition was signed by one of the tenants, JN, he testified that is not a reflection of the condition of the unit at the time the tenants moved in.

The landlord seeks compensation as outlined in the following table:

Description	Amount
Garbage Removal & Clean	\$200.00
Carpet Change Cost	\$1,561.00
Toilet Change	\$265.00
Gyprock, hole, paint repair cost	\$200.00
<b>Total</b>	<b>\$2,226.00</b>

The landlord provided receipts for carpet replacement and for the toilet replacement but no receipts were submitted for garbage removal and cleaning or for the repairs to drywall. The landlord testified the garbage removal and cleaning involved renting a truck from a friend for \$50.00; paying the landfill fees at \$40.00; paying a helper for cleaning for \$50.00.

The tenants testified the carpet was old and had cigarette burns in it when the tenancy began but that they had also caused some burns to it. The landlord testified the carpet was at least 10 years old. The tenants also agree the toilet lid was broken by them but it was broken when they were trying to deal with flood in the rental unit. The landlord testified that she was not aware of any floods during the tenancy.

The landlord testified there were holes in the drywall near the front entrance that looked to be the size of a foot or fist through the wall. The tenants testified that the damage was caused by opening the door and was not their responsibility.

The landlord testified the tenants had left a sofa, tables, freezer, shelves and a bed and a car but that the car was removed in October. The tenants agree they left a freezer and shelves and they retrieved the car within a month of the end of the tenancy.

### 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.

Despite the tenant's testimony, I accept the Condition Inspection Report, as signed by the tenant JN as a true reflection of the condition of the rental unit at the start of the tenancy. As such, I accept the tenants are responsible for the damage caused to the carpets.

However, Residential Tenancy Guideline #37 contains a table of the useful life of home finishes and it states that carpeting has a useful life of 10 years. As per the landlord's testimony I find the carpet had reached the end of its useful life and the tenants are not responsible for its replacement. I dismiss this portion of the landlord's Application.

I accept the tenants acknowledge, in their testimony, they left some belongings behind; that there was damage to the drywall near the entrance; and that the toilet lid was damaged.

Section 37 of the *Act* requires tenants who are vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear.

As such, I find the landlord has suffered a loss as a result of the tenants' failure to comply with Section 37. However, in relation to the cleaning and removal of items and to the repairs for drywall, I find the landlord, by failing to provide any documentary evidence, as failed to establish the value of that loss. I dismiss this portion of the landlord's Application.

As noted above, I accept there was damage to the toilet that was caused by the tenants. I also accept that the damage resulted from the tenants dealing with a flood in the unit, however, the tenants were still required to provide a duty of care to the fixture while dealing with the flood and I find failure to do so, resulted in the damage.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$290.00** comprised of \$265.00 toilet replacement and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: December 06, 2011.

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Residential Tenancy Branch