



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note that throughout the hearing the landlord's agent was cautioned for bad behaviour and was very disruptive.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy commenced on July 1, 2007. Rent of \$650.00 was payable on the first day of each month. The tenant paid a security deposit of \$325.00. The tenancy ended on June 30, 2011.

The landlord's agent testified that it cost them \$392.00 to purchase a second hand fridge, \$95.18 to replace the window track, pulley and hooks for the window coverings and \$42.40 to have the carpets steam cleaned. The landlord is seeking compensation in the amount of \$529.58.

The landlord's agent testified that a move-in condition report was done when the tenant moved into the rental unit. No copy of the move-in condition report was filed into evidence.

The tenant testified that a move-in inspection report was never completed when she moved in to the rental unit.

The tenant testified that a move-out inspection report was never completed and when she moved out of the rental unit, a lady on behalf of the landlord came and checked the rental unit and said everything was okay. She did not complete a written inspection report and did not provide her a copy.

The landlord's agent testified that a lady on the landlord behalf did inspect the rental unit. No copy of the move-out condition report was filed into evidence.

The tenant testified the fridge the landlord provided was not working properly and she contacted the landlord on many occasions to have the fridge repaired. The landlord ignored her requests and she ended up purchasing a new fridge. The tenant further stated that when her new fridge was delivered, the appliance company removed the landlord's fridge and placed the fridge in the basement of the apartment building. She contacted the landlord and told him the fridge was removed and placed in the basement. The tenant indicated there is a language barrier with the landlord, but he appeared to understand her.

The witness for the tenant testified that the tenant told her about the problems she was having with the fridge and the landlord was not responding to her calls. The witness also stated she was surprised when the tenant purchased her own fridge.

The tenant has submitted a letter from the appliance company that delivered her new fridge and the letter indicates they moved a fridge to the basement of the apartment building. The tenant has also submitted a copy of the receipt for the fridge she purchased.

The landlord's agent testified that the tenant removed the fridge from her rental unit and he knew nothing about its removal. He then changed his testimony and said he remembered the fridge was in the basement in the hallway outside the elevator, and it was against fire regulations. He further testified that a couple of days later the fridge went missing. He thinks maybe someone had BC Hydro come and remove the fridge to claim the rebate money.

The landlord's agent testified that he had to have the window track, pulley and hooks replaced to be able to hang the window coverings.

The tenant testified that the track was not working properly when she moved into the rental unit and she hung her own curtains and curtain rod up and removed it when she moved out.

The landlord's agent testified that the tenant failed to have the carpets steam cleaned at the end of the tenancy.

The tenant testified that she did not have the carpets steam cleaned, but the unit was spotless when she left.

The witness for the tenant testified that the tenant kept her rental unit very nice and clean.

### Analysis

This is the landlords claim for damage or loss under the Act and therefore the landlord has the burden of proof to establish his claim on the civil standard.

To prove a loss and have the tenant pay for the loss requires the landlord to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The testimony of the tenant and her witness was that the landlord was contacted on many occasions to have the fridge repaired and it was ignored. Under the policy guidelines it is the responsibility of the landlord to make the necessary repairs to the fridge. The landlord did not take the necessary steps to have the fridge repaired and the landlord provided no evidence as to the age or condition of the fridge.

Further the landlord knew the fridge was in the basement. There is no proof that the loss of the fridge was due to the actions or neglect of the tenant and the landlord did not take any steps to mitigate the loss of the fridge. I find the landlord has not proven the elements required for loss or damage. I dismiss the landlords claim to be compensated by the tenant for the fridge.

In the absence of a condition inspection report, I find there is insufficient evidence to meet the burden of proof establishing that the tenant damaged the window track as set out in the application.

Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(4) of the Act states: The landlord must complete a condition inspection report in accordance with the regulations and (5) both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act states: The right of a landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I dismiss the landlord's application to be compensated for the window track, pulley and hooks as set out in his application.

The parties agreed the carpets were not steam cleaned when the tenant vacated the rental unit.

The policy guidelines states: The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets **after a tenancy of one year**. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

As the tenant had resided in the rental unit for a period longer than one year, I find the landlord is entitled to recover \$42.40 that was paid to have the carpets steam cleaned.

I denied the landlord's application to recover the cost of filing his application as most of the claim was unsuccessful.

I authorize the landlord to deduct \$42.40 from the security deposit paid by the tenant. I grant the tenant a monetary order for the balance due of \$282.60.

### Conclusion

The landlord is entitled to deduct \$42.40 for the security deposit and I grant a monetary order to the tenant for the balance due.

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 13, 2011.

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Residential Tenancy Branch