



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlords: MND, MNDC, FF  
Tenants: MNDC, MNSD, FF, O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution, with both parties seeking a monetary order against the other party.

The hearing was conducted via teleconference and was attended by the tenants, the landlords and the landlord's legal counsel.

During the hearing I identified that I did not have all the receipts the landlords were referring to but the tenants acknowledged they received the documents. I allowed the landlords to provide these to me by fax no later than the end of business on the date of the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security and pet damage deposits; for compensation for loss and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants 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 parties agreed the tenancy began in May 2010 as a 16 month fixed term tenancy for a monthly rent of \$975.00 due on the 1<sup>st</sup> of each month and that a security deposit of \$475.00 was paid. The tenants testified they also paid a pet damage deposit of \$240.00 on June 17, 2010, the landlords deny accepting or requiring a pet damage deposit. The tenancy ended on August 31, 2011.

The tenants testified they provided the landlord with their forwarding address in writing on three occasions: August 10, 2011; September 1, 2011; and September 29, 2011. The female landlord confirmed she received the forwarding address in writing in August 2011.

The landlords testified that a move in inspection was completed at the start of the tenancy but that no Condition Inspection Report was completed. The tenants testified that one was completed but a copy was never provided to them. The landlords testified that two separate move out inspections were completed but that no report was completed.

The landlords seek compensation for the following:

Description	Amount
Light fixture globe	\$38.50
General Contractor (living room painting and carpet repair, including supplies)	\$395.10
General Contractor	\$191.18
Average of flooring estimates	\$999.74
<b>Total</b>	<b>\$1624.52</b>

The landlord testified that during the tenancy the tenants broke the globe light fixture in the kitchen and that the replacement cost \$38.50, no receipt was provided. The tenants testified that they had broken the fixture and that they were going to fix it but that the landlord told them not to as they had globes and they would replace it themselves.

The landlord submits that they had to hire a contractor to paint the wall where the tenants had had a candle sconce that permitted candle wax to drip down the wall requiring the painting of the entire wall. The landlord also testified that as a result of the tenant's cat there were scratches in the carpet.

The landlords testified they attempted to have their contractor patch the carpeting but that did not work and as such they need to replace the entire carpet that had been installed only a year prior to this tenancy. The tenants contend the carpet was 20 to 30 years old based on what they were told by the carpet cleaner.

The tenants also contest the female landlord's testimony that she saw the cat causing the damage because they actually caused it when they were moving furniture through the room. The landlords submitted three estimates for carpet replacement and presented the average cost in their claim.

The landlord, in the hearing, could not explain the additional amount of \$191.18 in the hearing.

The tenants are claiming \$50.00 as the cost of installing a "house phone" into the rental unit after being pressured by the landlord to do so. The tenants assert the landlord was threatening them with ending the tenancy within two to three weeks if they failed to install a landline.

The tenants also seek return of double the amounts of the security deposit (\$475.00) and pet damage deposit (\$240) in the amount of \$1,430.00

The landlords testified that they merely suggested the tenants might want to get a landline as the landlord was having difficulty getting a hold of them and for the purposes of emergencies in the home that would require 911 access.

### 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.

As both parties dispute the tenant's claim that the landlord pressured them into obtaining a landline and in the absence of any corroborating evidence, I find the tenants have failed to establish that any loss resulted from a violation of the *Act*, regulation or tenancy agreement.

Further I note that had the tenants truly been pressured to obtain a phone line or been issued a notice to end the tenancy because they failed to do so, they could have submitted an Application for Dispute Resolution to mitigate the damage or loss and they failed to do so. For these reasons, I dismiss this portion of the tenant's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the parties dispute whether the tenants paid a pet damage deposit and despite the submission of the tenants' summary of payments, the tenants have provided no corroborating evidence that such a payment was paid to the landlord. As such, I find the tenants have failed to establish they paid the landlords a pet damage deposit and I dismiss the portion of their Application return of the double amount of that deposit.

I accept from the testimony of both parties the landlords had the tenants forwarding address prior to the end of the tenancy on August 31, 2011. From the landlord's testimony, I also accept the landlord still retains the security deposit. As such, I find the landlords had until September 15, 2011 to either return the security deposit or file an Application for Dispute Resolution seeking to claim against it.

As the landlords failed to file their Application until November 24, 2011, I find the landlords have failed to comply with Section 38(1) and the tenants are entitled to double the amount of the security deposit.

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

From the testimony provided I accept that the tenants caused the breakage of the light fixture globe; the wax damage to the living room wall; and the living room carpet (whether by their own hand or by their pets).

I therefore find that the landlords have suffered a loss resulting from the tenants' failure to comply with Section 37. I accept the landlords have established the value of the repairs, painting and carpet repair attempts through the provision of receipts in the amount of \$395.10.

As to the value of the replacement light fixture bulb, I find the landlords have failed to establish the value of the replacement as no receipts were provided. Further, as the landlords did not dispute the tenants' testimony that the landlord had told them they already had a replacement globe, during the tenancy, I accept the tenants cannot be held responsible for its replacement at the end of the tenancy. I dismiss this portion of the landlords' Application.

While the parties dispute the age of the carpet, I find that whether the tenants cat or the tenants themselves caused damage to the carpet the damage that the tenants confirm existed hastened the landlord's need to replace the carpet. However as the carpets are at least, from the landlord's testimony nearly 3 years old and the useful life for carpets, according to Residential Tenancy Policy Guideline #37, is 10 years, I discount the landlord's claim by 30%.

As to the value, I find the landlords have established the value of replacement between \$862.10 and \$1,200.29 by way of submission of three quotes for replacements. As two of the quotes are in the \$870.00 range, I find it likely that these values represent the likely cost of replacement. I find, therefore, the landlords are entitled to carpet replacement in the amount of \$609.00.

Finally, as to the amount of \$191.18 listed as general contractor, I find that since the landlord were unable to articulate what this is for, I dismiss this portion of the landlords' Application.

### Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$54.10** comprised of \$395.10 painting and carpet repairs; \$609.00 carpet replacement less \$950.00 double the security deposit to the tenants.

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.

As both parties have been at least partially successful I dismiss both their claims to recover the filing fee.

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: January 10, 2012.

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Residential Tenancy Branch