



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF  
                             MND, MNSD, FF

### Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the tenant is for return of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The application by the landlord is to keep all or part of the security deposit, a monetary order for damages and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began January 1, 2009 with monthly rent of \$1600.00 and the tenants paid a security deposit of \$800.00.

The landlord testified that when the tenants vacated the rental unit they found the rental unit to be dirty, the walls damaged, the hardwood flooring damaged, the landlord's dryer removed, trash left in the yard and utilities left unpaid.

The landlord stated that she had an estimate of \$4670.00 to replace the hardwood flooring but has not had the work completed. The tenant stated that there was some water damage to the hardwood floor but that he should not be responsible for replacing the entire floor which was quite old. The tenant also stated that the landlord claims the damaged area to be over 300 sq. ft. when in reality it is a very small area. The landlord's estimate notes that matching flooring could not be found and that is why the entire floor needs to be replaced.

The landlord stated that she got an estimate for cleaning in the amount of \$420.00 and because the new tenants wanted immediate possession of the rental unit, the new tenants requested a rent reduction in exchange for cleaning. The landlord testified that she gave the new tenant's a \$420.00 rent reduction and the tenants in this hearing challenged the amount of the cleaning costs.

The landlord stated that she obtained an estimate for repair of the walls and painting in the amount of \$750.00 but has not paid a contractor to have this work completed.

The landlord stated that the tenant removed the dryer and replaced it with a dryer that is all rusty. The landlord has obtained an estimate of \$349.00 for a new dryer but has not yet replaced the dryer.

The landlord stated that the tenant has not paid the utility bills for the past 2 years and that there is currently \$453.07 owing on the utility bills. The tenant refuted the landlord's claim and stated that he had always paid the utility bills. The landlord has submitted evidence that there was \$853.07 in unpaid bills and the tenants paid an estimated amount of \$400.00. The tenant stated that the landlord owes them \$22.23 in an overpayment of the utilities and refers to a cheque for \$920.00 that was paid to the landlord November 27, 2011 specifically for utilities.

The landlord is also claiming \$74.09 for stationary supplies which were purchased to prepare the landlord's claim and bring it forward.

The landlord in this application is seeking \$6639.08 for the following:

WBH Construction – replacement of hardwood flooring	\$4670.00
Real Renovation – wall repair, painting	\$750.00
BC Hydro, Fortis, Shaw	\$310.47
Roper Home Appliances - dryer	\$349.00
Superstore – staples, ink	\$74.09
Home Depot – wall switch, soap holder	\$14.53
<b>Total Claim</b>	<b>6588.09</b>

The tenant testified that he had made a settlement offer of \$700.00 to the landlord but that the landlord had refused this offer.

The tenant stated that the master bedroom had no heat and that when he asked the landlord to supply heat, the landlord suggested that the tenant and landlord install a heat source together. The tenant stated that as neither of them are professionals in this regard he declined the landlord's request. The tenant stated that the master bedroom remained without a heat source.

The tenant stated that during the tenancy the roof in the living room leaked and that they had advised the landlord of this but that the roof was never fixed. The landlord refuted this claim and stated that the tenants had ruined their roof and never told the landlord about the roof leak problem.

The tenant stated that there was a lack of privacy and safety in the rental unit as the door between the tenant's and landlord's rental unit had no lock. The tenant did not provide dates or time when this door was used by the landlord to gain entry into their unit.

The tenants stated at the start of the tenancy they bought a carpet cleaner as the carpet had not been cleaned prior to them moving in. The tenants stated that they would now like to be reimbursed for the carpet cleaner.

The tenant acknowledged that at no time during the tenancy did he bring issues related to the tenancy to this office for resolution.

The tenant in this application is seeking \$2276.35 for the following:

Uncomfortable master bedroom	\$1360.00
No privacy & safety	\$560.00
Carpet Cleaner	\$72.12
Overpaid utility	\$22.23
Security deposit refund	\$800.00
MINUS family room repair cost	-\$700.00
<b>Total Claim</b>	<b>2226.35</b>

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord is entitled to a limited award for damages and cleaning costs.

The landlord has not yet incurred any costs for replacement of the hardwood floor, repair and painting of the walls and replacement of the dryer therefore these portions of the landlord's application are dismissed with leave to reapply.

I accept the landlord's testimony that cleaning was required in the rental unit and that the new tenants were offered a rent rebate in exchange for the unit not being clean. However in the absence of any evidence as to how much this rent rebate was and based on the landlord's photographic evidence, the landlord is awarded the limited amount of \$300.00. I accept the landlord's receipt for replacement of the switch plate and soap holder in the amount of \$14.53.

The landlord testified that utilities for the rental unit remain unpaid and the tenant testified that the utilities were overpaid. Both parties have submitted some evidence in this regard but neither has submitted enough evidence to clearly establish their claim. The landlord points to the billing and payment history for the hydro bill yet does not clarify how the tenant's \$920.00 payment figures into their claim. The tenant points to overpayments but has not provided copies of cancelled cheques for past utility

payments. As neither party has met the burden of proving this portion of their claim it is dismissed without leave to reapply.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord's claim for \$74.09 in stationary supply costs is hereby dismissed without leave to reapply.

It must also be noted that although the landlord's claim was for \$6588.09 the landlord did not submit the appropriate filing fee for a claim over \$5000.00.

	Claim	Award
Mary's Cleaning – rent rebate	\$420.00	\$300.00
Real Renovation – wall repair, painting	\$750.00	\$0.00
BC Hydro, Fortis, Shaw	\$310.47	\$0.00
Roper Home Appliances - dryer	\$349.00	\$0.00
Superstore – staples, ink	\$74.09	\$0.00
Home Depot – wall switch, soap holder	\$14.53	\$14.53
<b>Total Claim</b>	<b>6588.09</b>	<b>\$314.53</b>

Accordingly I find that the landlord is entitled to a monetary order for \$314.53.

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant is not entitled to money owed or compensation for damage or loss. Many of the issues that the tenant brings up are matters that should have been addressed during the tenancy and the tenant now makes these claims with no evidence to support them.

The tenant has not provided evidence of the actual temperature in the master bedroom and whether or not the temperature was below an acceptable standard. The tenant has not provided dates or times when the door between their unit and the landlord's was accessed and the tenant's safety and privacy compromised. The tenant has not provided dates or times when use of the living room was impacted by the roof leaking.

In regards to the tenant's request for reimbursement of the carpet cleaner, this is an item the tenants freely purchased and the landlord will not be held responsible for this purchase.

Regarding the tenant's claim for return of the security deposit I find that the tenant, after the landlord's award has been deducted, will be entitled to the \$485.47 balance.

	Claim	Award
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Leaking roof – living room	\$112.00	\$0.00
No privacy & safety	\$560.00	\$0.00
Carpet Cleaner	\$72.12	\$0.00
Overpaid utility	\$22.23	\$0.00
Security deposit refund	\$800.00	\$485.47
MINUS family room repair cost	-\$700.00	NA
<b>Total Claim</b>	<b>2226.35</b>	<b>\$485.74</b>

As both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

### Conclusion

I find that the landlord has established a monetary claim for **\$314.53** in damages and cleaning costs. I order the landlord pursuant to s. 38(4) of the Act to keep \$314.53 of the tenant's \$377.50 security deposit in full satisfaction of the claim.

I find that the tenant has established a monetary claim for **\$485.74** in return of the security deposit and I grant the tenant a monetary order under section 67 of the Act for this amount.

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: February 28, 2012

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Residential Tenancy Branch