



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND

### Introduction

This hearing was convened by way of conference call in repose to the landlords' application for a Monetary Order for damage to the unit, site or property.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

### Background and Evidence

Both parties agree that this month to month tenancy started on May 15, 2009 and ended on July 31, 2011. Rent for this unit was \$1,000.00 per month paid on the first day of each month.

The landlord testifies that the tenant has caused damage to the retaining wall at the property. The tenant removed landscape ties which were in place to hold the soil and stones up and now some of these ties have been removed the stones and soil fall onto

the pathway outside the front door to the unit. The landlord testifies the tenant removed the ties and left a gap approximately three to four feet long.

The landlord testifies that the tenant complained that she did not like the appearance of the wooden ties and after the tenant had vacated the unit the landlord found some of these ties had been removed. The landlords seek to recover the cost of replacing these ties. The landlord testifies that they had originally applied for the sum of \$400.00 but have now received an invoice for this work at an amount of \$520.00. The landlord testifies that the ties have been in place since around 1987.

The landlord testifies that at the end of the tenancy they discovered significant water damage to the linoleum on the bathroom floor. The landlords testify that the linoleum has been destroyed due to water damage caused by the tenant. The landlord also dispute that the tenant cleaned the carpets when she moved from the rental unit and state the carpet cleaning receipt for the hire of a carpet cleaning machine had a different address on it. The landlord testifies that the carpets had to be removed and replaced as they had a strong odour on them. The landlord states they did not attempt to clean the carpets themselves and wanted a clean unit for their daughter to move into. The landlords testify that the total bill for the new flooring came to \$901.45 but they only seek to recover a portion of this bill from the tenant. The landlords testify that the carpets and linoleum were both put down in approximately 1991.

The landlord also raised concerns about the thermostat in the unit. The landlords state the tenant had the thermostat set at 89 degrees Fahrenheit

The tenant testifies that she did remove a landscape tie in 2010 after the landlords had replaced some rotten wood in some other areas of the property. The tenant testifies that the piece of tie that she removed was sticking out and had six inch nails sticking from it. The tenant testifies that this was potential dangerous for her five year old child so she removed it. The tenant testifies that in approximately February and May, 2011 she had to remove two more pieces of these ties as sharp pieces of the rotten wood were

sticking out. The tenant testifies that she did complain to the landlord about these ties being dangerous and not about them being unsightly. The tenant testifies that the landlord would say he would repair the ties but the landlords never got round to making the repairs to this rotten and dangerous wood. The tenant states when she removed the rotten ties she left them at the property.

The tenant testifies that she did not cause any damage to the bathroom floor. The tenant testifies that during her tenancy she experienced three sewage floods, a leaking shower head and leaking caulking around the bathtub. The tenant testifies that the landlords were aware of this as they did come and snake the pipes after the floods. The landlord also changed the shower head and admitted to the tenant that the old shower head was not set up correctly. The tenant states the landlord also came and re-caulked the bathtub but after three days this caulking turned to 'mush'. Due to these problems the tenant testifies that water would leak from under the bathtub and the landlord never came back to replace the caulking again.

The tenant testifies that she did clean the carpets at the end of her tenancy and hired a carpet cleaner for this work. The tenant states the reason the receipt has a different address on it is because the store clerk copied her old address from her driving licence without turning the licence over to obtain her current address. The tenant testifies that the reason the heat had been left on so high was to help dry the carpets out after she had cleaned them.

The landlord argues that after the tenant told him the shower head was dripping he replaced the shower head and ran the shower and saw no evidence of leaking. The landlord testifies after they tore up the linoleum he again ran the shower and saw no evidence of leaking.

The tenant argues that the shower no longer leaked because the landlord replaced the shower head. The tenant states the flooring was damaged from the three floods and the leaking from the old shower and the damaged caulking.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages to the landscaping ties; the landlord agrees that these ties were 25 years old and put in place in approximately 1987. The average useful life of wooden retaining walls is 15 years; consequently, I would have to consider the possibility that the wood in these retaining walls was rotten as stated by the tenant and find the tenant cannot be held responsible for the cost of replacing these wooden ties. I further find a landlord has a responsibility to ensure a rental unit is maintained to ensure all areas of the rental property are safe for a tenants use. The landlords claim for this work is therefore dismissed.

With regard to the landlords claim to replace the linoleum and carpets in the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet all of the components of the above test. The landlords have not submitted any evidence to show that the damage or loss exists, the landlords have provided no evidence to show that this damage or loss happened because of the actions or neglect by the tenant and the landlords have not shown that the tenant failed to clean the carpets before the tenancy ended or in the event the carpets were still dirty that the landlords attempted to clean the carpets themselves before removing them. I further find the landlords agree that the carpets were over 21 years old and a useful life of a carpet is 10 years. I am also not satisfied that the bathroom floor was damaged by the tenant and not as a result of three floods and an older leaking shower head and caulking. Consequently, the landlords claim for damages is dismissed.

### Conclusion

The landlord's application for a monetary order for damages is hereby dismissed without leave to reapply.

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 13, 2012.

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Residential Tenancy Branch