



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          MND, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The hearing was adjourned on January 20, 2012 to allow the LL to resubmit his evidence to the tenants and the Residential Tenancy Branch and the hearing was reconvened on this date. The landlord was permitted to provide additional evidence after the hearing had concluded. 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 tenancy started on November 18, 2005. This tenancy reverted to a month to month tenancy after the end of the fixed term. Rent for this unit was \$1,753.00 and the tenants paid a security deposit of \$850.00 on November 18, 2005.

The landlord testifies that the tenants caused considerable damage to the rental unit and the landlord seeks to recover his costs associated with this damage as follows:

Damage to the washroom linoleum floor, subfloor, drywall and tiles and replacement carpets - \$5,264.00

House cleaning - \$870.80

Damage to the blinds in the family room and kitchen - \$645.12

Damage to the acrylic ceiling light panels in the kitchen - \$189.21

Cleaning the garage floor - \$95.20

Carpet cleaning - \$1,568.00

Repair and painting to the walls - \$1,245.00.

The landlord testifies that the move in condition inspection report shows the unit was in a clean, well maintained condition at the start of the tenancy and the move out condition report shows the damage caused to the unit by the tenants during their tenancy. The landlord has also provided some photographic evidence and the invoices for the claimed repair work and cleaning.

The landlord testifies that during the move out inspection the landlord discovered the damage to the washroom floor. The tenants claimed it had been there for two years but the landlord testifies that the tenants never informed him of any water damage. The landlord testifies he had a neighbour carry out repairs to the unit and recalls this neighbour telling the landlord about some water damage. The landlord testifies that he asked his repair man to investigate this and report back to the landlord. The landlord claims as he heard nothing else from his repair man or the tenant on this matter he assumed everything was resolved and forgot about the matter. The landlord testifies if the tenants had informed him themselves he could have mitigated his loss and repaired the problem before it became so much worse resulting in the linoleum and subfloor having to be removed and replaced along with water damage to the dry wall and tiles.

The landlord testifies that the tenants kept dogs in the unit without written permission from the landlord. These dogs caused extensive damage to the carpet in the family room leaving

rips under the French sliding doors. The carpet had to be replaced in this area as it were beyond repair. The landlord testifies that the carpets were approximately seven years old

The landlord testifies that the tenants agreed they did not clean any areas in the unit at the end of the tenancy and the unit required extensive cleaning including the stove, which eventually had to be replaced due to the high level of grease.

The landlord testifies that the tenants' dogs damaged the vertical blinds in the family room located above the ripped carpet. These blinds were all in good working order at the start of the tenancy but the dogs had ripped them and torn them away from their chains that are used to open and close the blinds. The blinds were beyond repair and had to be replaced. The blinds in the kitchen had also been pulled away from the ceiling and were cleaned and repaired. He landlord testifies that the vertical blinds were approximately seven years old

The landlord testifies that the kitchen ceiling had six acrylic light panels which were all left either cracked or broken and all six panels had to be replaced.

The landlord testifies that the garage floor was left with a heavy sludge like residue on it. The landlord suspects the tenants cleaned their kitchen equipment from their restaurant business on the garage floor and this residue was a result of this work.

The landlord testifies that the tenants had allowed their dogs to urinate all over the carpets. The carpet cleaner has documented that in this job was his second experience of extremely severe damage by dogs. The landlord testifies the dog urine was heavily soaked into the carpets in the main areas, the upstairs hallway, one other room and the room over the garage. The carpets had to be professional treated and repeated treatments were required to remove the urine and the odour. The landlord testifies that the new tenants that moved into the unit had to move out after three months due to the urine odour from the room over the garage that they found extremely offensive.

The landlord testifies that the tenants caused extensive holes, nicks, dents and scrapes in the walls that were beyond normal wear and tear. The walls had to be repaired and repainted. The landlord testifies that he believes the walls were last repainted in 2003.

The landlord testifies that the tenants did agree the landlord could retain the security deposit of \$850.00 and also gave the landlord another cheque for \$1,300.00. The landlord testifies that he accepted these sums from the tenants but never agreed it was in final settlement of any claim for damages as the landlord states he realized there would be more expensive. The landlord seeks to recover the balance of the amount due for the repairs of \$7,727.33 after deducting the amount of the security deposit and the \$1,300.00 provided by the tenants.

The tenants agree that they did not clean the rental unit at the end of their tenancy and they allowed the landlord to keep the security deposit. The tenants also agree they gave the landlord another amount of \$1,300.00 in final satisfaction of any claim for damages. The tenants agree that they kept dogs in the unit even though they were aware they did not have written permission to do so and the tenants agree that the dogs caused damage to the carpet. The tenants' testify that they gave the landlord the additional sum to cover damage to the carpets as the carpets were already old at the start of their tenancy.

The tenants dispute that they caused damage to the washroom. The tenants testify that they notified the landlords repair man about water leaking in the washroom. The tenants testify that the landlord did come and look at the washroom but did not do anything about the problem. The tenants' testify that when the landlord did eventually bring in a repair man he said sorry to the tenants that he had forgotten about it. The tenants testify that the repair man told them that the problem was caused because the tub was not parallel to the floor and this caused the caulking to come away from the tub and tiles which resulted in water getting in behind the tub. The tenants testify that they had to put tape on the floors to prevent water causing further damage. The tenants testify that the landlord is claiming for extra tiling in the bathroom over and above what was already there. The tenants state they should not be held responsible for the landlord's renovation of his property.

The tenants agree they did not clean the house before the end of the tenancy and this is why they agreed the landlord could keep the security deposit to cover cleaning and minor damage.

The tenants dispute the landlord's claims that the unit was in a well maintained condition at the start of their tenancy and state the unit was old and the carpets were old. The tenants testify that they were aware they were not allowed to keep dogs in the unit but state the landlord knew they had dogs. The tenants do not dispute that their dogs urinated on the carpets and state that is why they gave the landlord a further \$1,300.00 for this damage. The tenants' testify that the landlord came to the unit annually to collect rent cheques.

The tenants dispute that they are responsible for the damage to the blinds. The tenants state the blinds were old and the landlord only had the blinds cleaned at the start of their tenancy. The tenant testify that they did not know what the residue was on the garage floor and do not recall how the light panels were broken. The tenants testify that one panel was cracked and they reported this.

The landlord disputes the tenants' testimony and argues that the carpets and blinds were at least seven years old. The landlord argues that although he did go to the tenants unit annually he did not inspect the unit as he respected the tenants' privacy. The landlord also argues that as with all other repairs required to the property when the tenants informed him something needed to be repaired he acted immediately to ensure repairs where done. The landlord also argues that the only tiles put up in the bathroom were ones to replace the tiles that had to be removed to replace the drywall underneath due to the water damage. The landlord argues he would have never ignored a problem such as water damage because he would rather have saved himself larger costs in the future.

### Analysis

In this matter 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 of 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.

The landlord has provided a copy of the move in and move out inspection reports which document the damage claimed along with some photographic evidence of some of the claimed damage. The landlord has also sent in all invoices for the repair work and cleaning that was paid to rectify the damage.

However with regard to the landlords claim for the repairs to the washroom I am not fully satisfied that the landlord mitigated his loss in this matter and I am not fully satisfied that it was the tenants' actions that caused this water damage. The landlord agrees he was informed about the problem from his repair man but then as the repair man did not get back to the landlord on this matter the landlord assumed all was well without following up on this for the remainder of the tenancy. The tenants argue that when the washroom was repaired they were told the problem occurred because the tub was not sitting parallel to the floor causing the caulking to come away and the water to seep through onto the floor. However, I would also hold the tenants responsible for not directly informing the landlord of this problem for two years thus prolonging the water seepage onto the floor and creating more extensive issues. Consequently, I limit the landlords claim in this matter to 50 percent and find the landlord is entitled to a monetary award pursuant to s. 67 of the Residential Tenancy Act (Ac) to the sum of **\$1,680.00**.

With regard to the landlords claim for damages to the carpet; I have reviewed the documentary evidence and testimony of the parties and find the tenants dogs did cause damage to the carpets which resulted in the carpet in the family room having to be replaced.

However, as the carpets were at least seven years old and have a useful life of 10 years I have allowed for depreciation on the carpets and limit the landlords claim to 30 percent. The landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$571.20**.

With regard to the landlords claim for replacement blinds and blind repairs. I have considered this claim and find it is likely that the tenants' dogs did damage the vertical blinds located in the family room. However, as these blinds were at least seven years old and have a useful life of 10 years I will limit the landlords claim to 30 percent due to depreciation. The landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$136.08**. With regard to the blind repairs and cleaning for the kitchen blinds I find in favor of the landlords claim and the landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$191.52**.

With regard to the landlords claim for cleaning the unit, I have considered the documentary evidence and both parties testimony and find the tenants agree they did not do any cleaning in the unit before the end of the tenancy. Consequently, I uphold the landlords claim for cleaning and the landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$870.80**.

With regard to the landlords claim for replacement acrylic ceiling tiles; as the documentary evidence supports the landlords claim that these tiles were cracked or broken and the tenants have no recollection how this damage occurred I find it is likely the tenants were responsible for this damage and I therefore uphold the landlords claim. The landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$189.21**.

With regard to the landlords claim for carpet cleaning; the tenants agree that their dogs did urinate on the carpets and although the tenants did give the landlord a cheque for \$1,300.00 for this damage the actual cost of cleaning these carpets was much higher. The tenants argue that the landlord accepted this payment in full settlement of his claim for carpet cleaning however the landlord disputes this and the tenants have no corroborating evidence to support otherwise. Consequently, I find the landlord is entitled to recover the

carpet cleaning costs. The landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$1,568.00**.

With regard to the landlords claim for cleaning the garage floor; as the tenants agree they did not clean the unit, cleaning would also include their responsibility to ensure the garage was left clean. I find from the documentary evidence presented along with the testimony of the landlord that the landlord did incur costs in having to have a sludge like residue removed from the garage floor. Consequently, the landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$95.20**.

With regard to the landlords claim for repairs and painting to the walls of the unit; I have considered the landlords documentary evidence and testimony and find that the unit was last painted in approximately 2003. As the useful life of interior painting is around 10 years I find the landlord had not repainted the unit for eight years and it is likely that the unit would require some new paint as a result of normal wear and tear. However, I find the tenants also caused some damage to the walls which was more than normal wear and tear and this damage should have been repaired by the tenants at the end of their tenancy.

Consequently, I will limit the landlords claim for repainting to 20 percent and allow an additional sum for the repairs to the walls. Consequently, the landlord will receive a monetary award pursuant to s. 67 of the Act to the sum of **\$549.00**.

As the landlord has been partially successful with his claim the landlord is entitled to recover the **\$100.00** filing fee from the tenants pursuant to s. 72(1) of the Act. The landlord will receive a Monetary Order for the following amount:

Washroom repairs	\$1,680.00
Replacement carpet	\$571.20
Replacement blinds and repairs	\$327.60
Cleaning	\$870.80
Replacement ceiling tiles	\$189.21
Carpet cleaning	\$1,568.00

Garage floor cleaning	\$95.20
Painting and wall repairs	\$549.00
<b>Subtotal</b>	<b>\$5,851.01</b>
Less security deposit as agreed	(-\$850.00)
Less amount paid by tenants	(-\$1,300.00)
<b>Total amount due to the landlord</b>	<b>\$3,701.01</b>

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,701.01**. The order must be served on the respondents and is enforceable through the Provincial Court 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: March 05, 2012.

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Residential Tenancy Branch