



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to the rental unit; for money owed or compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on June 21, 2010 for a 7 month fixed term tenancy beginning on July 1, 2010 that converted to a month to month tenancy on February 1, 2011 for the monthly rent of \$1,050.00 due on the 1<sup>st</sup> of each month and a security deposit of \$525.00 and a pet damage deposit of \$100.00 paid on July 3, 2010. The tenancy agreement stipulated the tenants were responsible for ½ the utility and ½ the cable costs.

The landlord asserts the tenancy ended December 17, 2011 when the landlord concluded the tenants had abandoned the rental unit. The landlord submits the tenants informed him in mid November that they had bought a house that they would be taking possession of on November 30, 2011.

The landlord also submits the tenants verbally told him that they would be moving all their possessions and changing their insurance effective December 1, 2011 but that they would still want to use the washer and dryer in the unit during the first week of December 2011.

The landlord stated he informed the tenants that he would be responsible for the payment of rent for December 2011 but that his offer of paying ½ month's rent and

keeping the damage deposit was not sufficient and he rejected the tenant's proposal. The parties confirmed the tenants paid rent for the full month of December 2011.

The landlord submits he obtained the tenant's permission on December 17, 2011 to enter the unit to show it to another potential renter and at that point he confirmed the tenant had removed all his personal belongings and that he had no expectations the tenant would return.

The landlord further submits that when he was denied access the following day to make some repairs and he felt he had no choice but to consider the rental unit abandoned by the tenants and he changed the locks on December 19, 2011 and conducted the move out inspection in the absence of the tenants.

The landlord confirmed he did not at any time specifically contact the tenants via email or by any other method to confirm if they would be returning to the unit. The landlord also testified that no move out inspection had been scheduled at any time.

The landlord submits the tenants have marked up the walls, caused holes and inadequate repairs to the walls. Further the landlord submits the tenants cat caused damage to both the carpet and the railing post and the tenants failed to clean the carpets at the end of the tenancy.

The tenants submit that the rental unit had some of the damage, specifically to the walls, prior to the start of the tenancy and they did offer to clean the carpets but that they were concerned about the tears in the carpet and causing additional damage to them, so they did not clean them.

The landlord seeks compensation also for utility charges in the amount of \$140.98 that include the full month of December 2011. The tenants agree they owe the landlord for utilities however they submit that they should only be held responsible for utilities until the landlord changed the locks, in the amount of \$82.00.

The landlord seeks the following compensation:

Description	Amount
Wall Repairs (supplies and labour)	\$255.94
Carpet Replacement/Repair	\$270.01
Post Replacement	\$160.00
Carpet Cleaning	\$110.00
Utilities	\$140.98
<b>Total</b>	<b>\$936.93</b>

### 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.

Section 37 of the *Act* requires tenants, when vacating a rental unit, to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I accept, from the photographic evidence, the condition of the walls, the railing post, and the carpet at the end of the tenancy required some repairs. However, the landlord did not complete a move in condition inspection and has no evidence to confirm the condition of the walls, post or carpet at the start of the tenancy.

As such, I find the landlord has failed to establish the damage to the walls, the post, or the carpet resulted during the tenancy and therefore from a violation of Section 37. I therefore dismiss this portion of the landlord's Application.

As to the landlord's claim for compensation for carpet cleaning, Residential Tenancy Policy Guideline #1 stipulates that for tenancies over 1 year a tenant is expected to clean carpets at the end of the tenancy. The Guideline goes on to say that for tenancies that include pets tenants are responsible for carpet cleaning at the end of the tenancy regardless of the duration of the tenancy.

For these reasons and based on the testimony of both parties, I find the tenants are responsible for carpet cleaning and I accept as reasonable the landlord's claim of \$110.00.

In relation to the landlord's claim for utility charges, I find that once the landlord changed the locks on the rental unit he prevented the tenants from access to any of the utilities that he now seeks compensation for the full month. For this reason I accept the tenants' position that the landlord is entitled to utilities only for the period they had access to the rental unit.

While noted above, the landlord had failed to complete a move in condition inspection as is required under Section 23 of the *Act*. Section 24 states that if a landlord fails to comply with Section 23 the right of the landlord to claim against the security deposit for damage to the rental unit is extinguished.

However, Section 72 states that if I order a party to a dispute resolution proceeding to pay any amount to the other party the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$242.00** comprised of \$110.00 carpet cleaning; \$82.00 utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security and pet damage deposits held in the amount of \$625.00 in satisfaction of this claim. I order the landlord to return the balance of the deposit and I grant a monetary order to the tenant in the amount of **\$383.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced 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 09, 2012.

---

Residential Tenancy Branch