



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:14 p.m. in order to enable them to connect with this hearing scheduled for 3:00 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords testified that they sent a copy of their dispute resolution hearing package to the tenants at the correct mailing address provided to them by the tenants by registered mail on March 23, 2012. They provided a copy of the Canada Post Tracking Number and Customer Receipt. I am satisfied that the landlords served this package to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy?  
Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy agreement commenced on February 1, 2011. Monthly rent was set at \$1,750.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$875.00 security deposit paid on January 16, 2011. The landlords provided a copy of the February 1, 2011 joint move-in condition inspection report and a February 29, 2012 move-out condition inspection report. This latter report was created by the landlords after the tenants vacated the rental unit by February 29, 2012 without agreeing to meet with the landlords to conduct a joint move-out condition inspection requested by the landlords. The landlords testified that they provided a copy of both of these reports to the tenants.

The landlords' application for a monetary award of \$1,000.00 was for damage arising out of this tenancy. They submitted into written evidence copies of receipts for a number of items they maintained were damaged during this tenancy. These receipts included the following:

<b>Item</b>	<b>Amount</b>
Vertical Blinds, Closet Door, Shower Soap Glue	\$216.44
Canada Post Mail Receipt	20.34
2 Window Blinds	78.33
Fridge Replacement Parts	14.00
Fridge Handle – Paid March 13, 2012	54.94
Fridge Handle – Paid August 8, 2011	51.80
Carpet Replacement- Materials	324.98
Carpet Installation - Labour	179.20
Recovery of Filing Fee	50.00
<b>Total of Above-Noted Items</b>	<b>\$990.03</b>

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on my comparison of the joint move-in condition inspection report with the landlords' move-out condition inspection report and the photographs taken by the landlords after the tenants vacated the rental unit, I find that the landlords are entitled to a monetary award for damage arising out of this tenancy.

I allow the landlords' requested claim for the above-noted list of items with the following exceptions.

I dismiss the landlords' claim for recovery of their Canada Post Mailing Costs as the only recovery of fees associated with their application that they can recover is the \$50.00 filing fee for their application, which I allow.

As outlined below, Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Dispute Resolution Officers in determining claims for damage.

*This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*

The useful life of carpets as set out this Policy Guideline is 10 years. The landlords testified that the damaged carpets were last replaced 3 ½ years before the end of this tenancy. As such, I find that the landlords claims for carpet materials and installation should be reduced by 35% to reflect that 65% of the useful life of the carpets remained by the end of this tenancy. Using this guideline, I find that the landlords are entitled to recover 65% of their claims for the carpet materials, resulting in a monetary award of \$211.24 for this item (i.e.,  $6.5/10 \times \$324.98 = \$211.24$ ). Similarly, I find that the landlords are entitled to a monetary award of \$116.48 for carpet installation (i.e.,  $6.5/10 \times \$179.20 = \$116.48$ ).

I allow the landlords' claim for two fridge handles as they testified that the tenants damaged two of these handles during their tenancy. They testified that the tenants did not reimburse them for the first fridge handle which the landlords purchased earlier in this tenancy.

As the landlords have been successful in their application, I allow the landlords to recover their filing fee from the tenants.

The total of the landlord's entitlement to a monetary award is \$793.23. I allow the landlords to retain this amount from the tenants' \$875.00 security deposit that the landlords continue to hold. No interest is payable on the tenants' security deposit over this period. I order the landlords to return the remaining \$81.77 portion of the tenants' security deposit.

Conclusion

I issue a monetary Order in the tenants' favour in the following terms which requires the landlords to return \$81.77 from the tenants' security deposit after allowing the landlords' to retain \$793.23 for damage arising out of this tenancy and for the recovery of their filing fee for this application.

<b>Item</b>	<b>Amount</b>
Vertical Blinds, Closet Door, Shower Soap Glue	\$216.44
2 Window Blinds	78.33
Fridge Replacement Parts	14.00
Fridge Handle – Paid March 13, 2012	54.94
Fridge Handle – Paid August 8, 2011	51.80
Carpet Replacement- Materials	211.24
Carpet Installation - Labour	116.48
Recovery of Filing Fee	50.00
Less Security Deposit	-875.00
<b>Total Monetary Order</b>	<b>(\$81.77)</b>

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 18, 2012

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Residential Tenancy Branch