



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the unit?

### Background and Evidence

The tenancy began on January 28, 2009. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant. The tenancy ended on July 30, 2011.

The landlord claims as follows:

a.	Repainting the rental unit & repairs	\$1,159.33
b.	Carpet cleaning	\$168.00
c.	Keys	\$196.00
	<b>Total claimed</b>	<b>\$1,523.33</b>

### Repainting the rental unit & repairs

The landlord testified as a term of the tenancy agreement there was to be no smoking inside the rental unit or on the property.

The landlord testified the tenant breached the term of no smoking in the rental unit or on the property. The landlord stated the tenant also breached the term of no other occupants to reside in the unit under the tenancy agreement. Filed in evidence is a

copy of the tenant's roommate agreement. Filed in evidence is a copy of the tenancy agreement.

The landlord testified he saw the tenants guest/roommates smoking and the tenant was provided written warnings and as a result of not compiling with the warnings and the tenant was served with one month notice to end tenancy for cause. The landlord stated the tenant accepted the notice and moved out of the unit on July 30, 2011. Filed in evidence is a copy of the notice to end tenancy.

The documentary evidence filed by the landlord is a "to whom it may concern" letter. In the letter it states "I toured the suite when empty, stunk like smoke, noticing the gas fireplace thank God turned off used as a garbage disposal with plenty of cig. butts, cig packages and condoms, beer cans etc." [reproduced as written]

The landlord testified that he rented the unit for July 31, 2011, however, the new tenant was not able to move into the unit due the smell and as an additional covenant on the new tenancy agreement the rental unit was required to be painted. The landlord is seeking compensation in the amount of \$1,064.33 for the cost of paint and labour cost to have the unit painted. Filed in evidence is a copy of the new tenancy agreement. Filed in evidence is a receipt for labour and for paint.

The landlord testified he is seeking compensation in the amount of \$95.00 for repairing a ceiling and repainting.

The tenant testified that he never smoked in the rental as he is not a smoker.

The tenant testified that he did have roommates and rented his room, while he slept in the living room. The tenant stated that his guest and roommates were never left alone in the rental unit and they never smoked in the unit. The tenant stated he acknowledged some of his guest and roommates smoked, however, they always did that off the landlord's property.

The documentary evidence filed by the tenant is a "whom it may concern" letter. In the letter it states "(tenant) was working two jobs at the time, I agreed to arrange for the move and to help him clean" [reproduced as written]

### Carpet Cleaning

The landlord testified the tenant did not have the carpets steam cleaned at the end of tenancy. The landlord is seeking compensation in the amount of \$168.00. Filed in evidence is a copy of the receipt.

The tenant testified that the carpets were not steam cleaned at the end of tenancy, however, the carpets were clean.

### Locks

The landlord testified that the tenant provided him keys, however, the keys provided were not to the rental unit. The landlord is seeking compensation to replace the locks in the amount of \$196.00. Filed in evidence is receipt.

The tenant testified that he gave the landlord all the keys to the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

### Repainting the rental unit & repairs

The evidence of the landlord was the tenant had more than one roommate which is a breach of the tenancy agreement. The tenancy agreement states "The resident covenants and agrees that the premises shall by not exceeding 1 adult only (19 years and over) and no exceptions" [reproduced as written]

Filed in evidence is a roommate agreement the landlord found left behind in the rental unit. The agreement states "the roommates share the rent amount equally" [reproduced as written] signed by the tenant, roommate and witnessed.

The evidence of the landlord was there was smoking by the tenants guest/roommates and the tenant was served with a notice to end tenancy, which tenant the tenant accepted and moved from the unit.

The documentary evidence filed by the landlord is a letter from a third party that viewed the unit and smelled smoke and witnessed cigarette butts tossed in the gas fireplace. Also, filed in evidence is the new tenancy agreement with a covenant that required the landlord to be painted the unit due to the smell.

The evidence of the tenant was he does not smoke nor did not allow any guest or roommates to smoke in the unit and that he never left any of them alone in the unit.

I find that I prefer the evidence of the landlord over the tenant regarding smoking in the rental unit for the following reasons.

The landlord saw the tenant's guest/roommates smoking and the landlord provided the tenant with a notice to end tenancy for cause, which was accepted by the tenant.

In the landlord's documentary evidence is a letter from a third party that viewed the unit and could smell smoke and witness cigarette butts in the gas fireplace. Further, the new tenancy agreement had an addition covenant which required the unit to be painted due to the smell, which is signed by the new tenant.

The evidence of the tenant was he had roommates, which is a breach of the tenancy agreement. The evidence of the tenant was that his roommates and any guest were never in the unit without him. I find that it is unlikely that the tenant would be supervising roommates and I also find that it is unlikely that they were never be left alone in the rental unit especially if the tenant was working two jobs.

Therefore, I find the landlord is entitled to compensation for the cost of having the rental unit painted in the amount of **\$1,064.33**.

The evidence of the landlord was that he paid \$95.00 to repair and paint a ceiling. I find there was insufficient evidence to make a determination on this issue. Therefore, I dismiss the landlord's claim for compensation.

### Carpet Cleaning

The evidence was the tenant did not have the carpets steam cleaned at the end of tenancy.

Policy Guideline 1 – states the tenant is responsible will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year or if premises were smoked in.

In this case, the tenancy exceeds one year and there was smoking in the unit. Therefore, I find the landlord is entitled to compensation in the amount of **\$168.00**.

### Keys

The evidence of both parties was that the tenant returned keys. The evidence of the landlord was the keys that were returned were not the proper keys to the rental unit. I find that due to the tenant breaching the tenancy agreement by having roommates and by not returning the proper keys, the landlord was obligated to change the locks to

ensure the new tenants were the only party that had a copy of the key to the rental unit. Therefore, I find the landlord is entitled to compensation in the amount of **\$196.00**.

The landlord has established a monetary order in the amount of **\$1,478.33** comprised of the above amounts and the \$50.00 paid to file the application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for the above 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: May 31, 2012.

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Residential Tenancy Branch