



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The co signer to the tenancy agreement and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine 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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties attending agree that this tenancy started originally on April 10, 2010 and was renewed on May 01, 2011 for a fixed term of one year. The tenant moved from the rental unit on April 29, 2012. Rent for this unit was \$818.00 per month and was due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit to the landlord of \$400.00 which was returned to the tenant on May 10, 2012. The tenant gave the landlord her forwarding address in writing on April 29, 2012.

The landlord's agent testifies that the tenant failed to clean the carpets at the end of the tenancy. There were stains left on the carpets. The landlord seeks to recover the costs incurred to have the carpets cleaned of \$94.08.

The landlord's agent testifies that the tenant failed to leave the rental unit to a reasonable standard of cleanliness. Additional cleaning had to be completed as documented in the move out condition inspection report. The landlord seeks to recover the costs incurred of \$250.00.

The landlord's agent testifies that the tenant did not repair the gouges in the walls in the living room, dining room and master bedroom. The landlord had to have these repairs filled, sanded and repainted and seeks to recover the costs incurred of \$308.00.

The landlord has provided a copy of the move in and move out condition reports detailing the cleaning and damages. The tenant has signed this report to indicate she agrees with the condition of the rental unit and has signed to agree the landlord may keep her security deposit to cover carpet cleaning costs estimated at \$100.00, an admin cleaning fee estimated at \$25.00, a cleaning fee estimated at \$250.00 and paint repairs with no estimate. The landlord's agent testifies that they did return the tenant's security deposit to her but now seek a Monetary Order to recover the costs incurred for this work. The landlord has provided copies of the invoices for the carpet cleaning, the cleaning and the paint repairs and no longer seeks to recover the cleaning admin fee.

The landlord's agent testifies that the landlord incurred Strata fines due to the tenant's behaviour. On January 11, 2012 a \$200.00 Strata fine was imposed for excessive noise from the tenants unit and on February 20, 2012 a Strata fine of \$200.00 was imposed for illegal substances being used in the tenants unit. The landlords agent testifies the tenant was sent a copy of the Strata letters and a warning letter after the first Strata letters were received regarding these incidents. As the incidents recurred the Strata Council then imposed the fines. The landlords agent testifies that the landlord did not receive any correspondence from the tenant after the compliant letters were sent to the tenant and the tenant had 14 days to respond to each letter sent.

The tenant's co-signer testifies that when the tenant moved out the landlord's inspector came to do the inspection with the tenant and told the tenant the unit was in a good condition but could have been a little better. The co-signer testifies that the carpets were not cleaned but were vacuumed thoroughly and there was one stain which was there at the time the tenant moved in. The co-signer points out that the date on the inspection report is wrong and documents that the report was done on March 31, 2012 when in fact it was completed on April 29, 2012.

The co-signer testifies that the tenant did agree the landlord could retain the sum of \$375.00 from the security deposit to cover carpet cleaning, cleaning and cleaning admin costs and then 24 hours later the tenant received a telephone call from the landlord informing the tenant they would also be charging the tenant for painting costs. The co-signer states the tenant had not agreed to painting costs and although there was some scuffing on the walls this was no more than normal wear and tear. The co-signer testifies that the tenant did receive a cheque from the landlord for \$400.00 and the next day the landlord called the tenant and informed the tenant she was not entitled to her security deposit.

The co-signer states she sent a registered mail letter in evidence to the landlord and the Residential Tenancy Office, However the co-signer has not provided a registered mail

tracking number to show the evidence was sent and this evidence has not been received prior to this hearing.

The co-signer testifies that the tenant was sent a compliant letter regarding noise in her unit. The co-singer states the tenant told the co-signer that she was not home on the day in question and had sent a letter to the landlord to refute the compliant. The co-signer states the tenant did not receive a second letter from the landlord about smoking on the balcony. The co-signer states the tenant did not get these letters until she received the hearing package. The co-signer states she has no direct knowledge of these events as she did not live in the unit and is going from information provided to her by the tenant.

The co-signer states the tenant informed her that she did receive a complaint letter on March 14, 2012 about noise and the letter states the police were called. However the co-signer states the tenant informed her that no police officers have visited the tenant. The co-signer testifies that the tenant did inform her that she was celebrating New Years Eve and was outside with a friend. When they entered the building they were greeted by a security guard who kissed them both on the cheek, they returned to the unit and the party was over.

The landlord's agent testifies that she did not receive any letters or e-mails from the tenant concerning the complaint letters. The landlord's agent testifies that the move out inspection report is dated March 31, 2012 because this was the date the tenant originally gave to end the tenancy and the report was prepared and sent to the inspector. After the tenant changed her mind and moved out on April 29, 2012 the date was not changed. The landlord's agent testifies that each letter was sent to the tenant two days and eight days after the strata notices were received by the landlord. One letter has a date of May 25, 2012 because the landlord had to request another copy from the Strata Council to send in evidence.

### Analysis

With regard to the landlords claim for carpet cleaning, cleaning and painting repairs; 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 have considered the evidence before me and the arguments put forth by the parties attending. I find the landlord has provided sufficient evidence to show that the tenant failed to clean the carpets at the end of the tenancy. When a tenancy exceeds a year a tenant is expected to shampoo the carpets at the end of the tenancy and the tenant has agreed to pay the carpet cleaning costs on the inspection report

The move out condition inspection report indicates that there are areas of the unit which were not cleaned and left dirty at the end of the tenancy and the tenant has agreed to these conditions on the report.

The inspection report does indicate gouges in some walls and I find that gouges in walls is beyond normal wear and tear.

Consequently, I find the landlord has met the burden of proof for costs associated with carpet cleaning of \$94.08, cleaning the unit of \$250.00 and repairs to the walls of \$308.00 and will receive a monetary award to recover these costs.

With regard to the landlords claim for Strata fines; I find the landlord has provided sufficient evidence to show that the tenant was made aware of the complaints about her from the Strata Council and there is no evidence to show that the tenant responded to these letters. The co-signer has given testimony but as the tenant failed to appear at the hearing it is my decision that the co-signers testimony is hearsay as the co-signer does not have first hand direct knowledge of these events.

Consequently, I am satisfied that the landlord has incurred additional costs of \$400.00 in Strata fines due to the tenants behavior and the landlord is therefore entitled to recover these fines from the tenant.

As the landlord has been successful with their application I find the landlord is entitled to recover the \$50.00 filing fee from the tenant.

A Monetary Order has been issued to the landlord for the following amount:

Carpet cleaning	\$94.08
Cleaning	\$250.00
Paint repairs	\$308.00
Strata fines	\$400.00
Filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$1,102.08</b>

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,102.08**. The order must be served on the respondent 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: July 26, 2012.

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Residential Tenancy Branch