



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant's agent (the agent) confirmed that the tenant received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on June 8, 2012. I am satisfied that the landlord served this package to the tenant. I am also satisfied that the parties served one another with their respective written evidence packages in sufficient time to enable them to prepare for this hearing.

At the hearing, the landlord testified that the original amount requested in the application for dispute resolution did not include tax. The agent said that he was aware that the landlord intended to seek a monetary award of \$2,342.93, the amount shown on the landlord's invoice entered into written evidence, an amount which included tax. I allowed the landlord to amend the requested amount of the monetary award to \$2,342.93 to reflect the landlord's written submissions.

### Issues(s) to be Decided

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

### Background and Evidence

This one-year fixed term tenancy commenced on June 1, 2011. The tenant vacated the rental unit on May 31, 2012, the scheduled end date for this fixed term tenancy. Monthly rent was set at \$830.00, payable in advance on the first of each month. The

landlord continues to hold the tenant's \$415.00 security deposit. Although Landlord YL (the landlord) testified that the tenant brought pets to this rental unit in contravention of her tenancy agreement, the landlord did not receive a pet damage deposit.

The parties agreed that the tenant and the landlord participated in joint move-in and move-out condition inspections on May 10, 2011 and May 31, 2012, respectively. The agent confirmed that the landlord provided copies of the move-in and move-out condition inspection reports to the tenant.

The landlord amended application for a monetary award of \$2,242.93 was to replace carpet and underpad, flooring in the bathroom and to remove and reinstall the toilet. She claimed that this damage resulted from urine damage and odour from the tenant's two cats. She entered into written evidence a copy of a note from the company that replaced the flooring that read as follows:

*...This Apartment's carpets are being changed due to Pet Urine stains. The sub floor will require cleaning prior to new installation with bleach. Remove and dispose of existing carpet. Install new C 5 Carpet in entire unit except for kitchen and washroom. Install new Ovation Tile in Kitchen and Washroom. Remove and reinstall toilet. Existing wood base.*

The landlord entered into written evidence a copy of the invoice from this company which included the following:

Item	Amount
Removal (Carpet)	\$115.50
Carpet	864.50
Undercushion (Carpet)	157.50
Install Carpet	399.00
Tile	315.40
Underfloor (Congoleum)	30.40
Installation (Tile and Duraceramic Tile)	159.60
Remove reinstall toilet	50.00
Tax	251.03
<b>Total Monetary Order Requested</b>	<b>\$2,342.93</b>

The landlord and the landlord's manager who attended this hearing both testified that the smell of urine in the rental unit was very offensive during the final month of this tenancy when both of them inspected the unit on two occasions. The landlord testified that the cat urine odour was very bad when she conducted a preliminary move-out inspection on or about May 8, 2012. She said that by the time she conducted the joint move-out condition inspection on May 31, 2012, the tenant had removed her electrical

fragrance generators. She testified that the urine odour was more pronounced by May 31, 2012. She said that there had also been a problem with cat urine odour when the tenant left a rental unit she had been using on the third floor of this building. The landlord's manager said that she found the odour of cat urine very offensive when she participated in a fire inspection in approximately March 2102. The landlord's manager testified that she inspected the premises on June 1, 2012, and found the odour very offensive. The landlord testified that she consulted with the landlord's carpet cleaning company to determine if carpet cleaning could remove the odour from this rental unit. After a representative of the carpet cleaning company inspected the rental unit, he concluded that only a total removal of the carpet, tile and underfloor could remove the odour of cat urine.

The agent said that the tenant could not attend the hearing because she had to work. He said that he was familiar with the tenant's attempts to clean the carpet as he had assisted her in her efforts. While the agent said that the tenant fully admitted that the carpet required professional cleaning at the end of this tenancy, he said that there was little if any odour present after he and the tenant had completed their cleaning of the rental unit. He said that he made use of his "blacklight" which identifies pet urine odour. He said that there was only one small area of pet urine staining and that the landlords have greatly exaggerated the pet odour issue as a way of obtaining the replacement of what were old carpets when the tenancy first began and of recovering costs from the third floor rental unit that should form no part of the landlord's current application.

### 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 tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When considering changes in the condition of a rental unit during the course of a tenancy, reference to the joint move-in and joint move-out condition inspection reports is very helpful if they are available. In this case, the only reference to the carpets in the joint move-in condition inspection report was that the carpet in the entry way was "old

carpet.” Although both parties agreed that the carpet throughout the rental unit was the same age, the landlord testified that the note regarding the carpet would have been generated as it would be subject to heavier use than other parts of the rental unit where the carpet was in better condition. The joint move-out condition inspection report signed by both the landlord and the tenant had repeated references to the carpet/floor having a “very strong smell”, “very strong cat smell” or “pet urine smell” with respect to all of the rooms in the rental unit with the exception of the bathroom where the floor had a “smell.” Although the tenant signed that she disagreed that this joint move-out condition inspection report fairly represented the condition of the premises, she did not provide any explanation as to the nature of her disagreement.

Both parties claimed that they could have produced witnesses who would have attested to the accuracy of their testimony with respect to the cat urine odour, the basis for the landlord’s claim for a monetary award. However, neither party produced such witnesses, although the landlord did submit written evidence from the carpet cleaning company that is consistent with the landlord’s evidence.

I first acknowledge that odours are somewhat subjective and difficult to ascertain by a Dispute Resolution Officer confronted with conflicting evidence and testimony at a teleconference hearing. However, I am satisfied on a balance of probabilities that the landlord has demonstrated to the extent necessary some entitlement to a monetary award for the costs incurred in replacing the carpeting in this rental unit. The most direct evidence before me was the sworn oral testimony of the landlord who attended the joint move-out condition inspection. I also find the landlord’s manager’s evidence with respect to her inspection of the rental unit on the day after the end of this tenancy of value. I also attach weight to the differences between the joint move-in and move-out condition inspection reports, and in particular the frequent notations regarding cat urine odour in the move-out report. The agent’s evidence with respect to his efforts to clean the rental unit and his assessment of the odour in the rental unit is of more benefit than his oral and written evidence with respect to the “blacklight” device he used to determine that cat odour was not present. With respect to this evidence, he admitted that he had no professional expertise with respect to the operation of such a device and I give little weight to his evidence in this regard.

As set out 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.

***Damage(s)***

*When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the dispute resolution officer may consider the useful life of a*

*building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item...*

*If the dispute resolution officer finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the dispute resolution officer may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

At the commencement of the hearing, the landlord and the landlord's manager testified that they were uncertain as to the date when the carpeting in this rental unit had last been replaced. After checking her records, the landlord's manager gave undisputed sworn testimony that all of the carpeting in this rental unit was last replaced in March 2009. By the end of this tenancy, the carpeting in this rental unit was 39 months old. The useful life for carpeting according to Policy Guideline 40 is set at 10 years (or 120 months). Based on this undisputed evidence and as outlined below, I find that the landlord's cost for replacing all of the carpeting in this rental unit (including labour, underpadding and the entrance way into the rental unit) was \$1,720.88.

Item	Amount
Removal (Carpet)	\$115.50
Carpet	864.50
Undercushion (Carpet)	157.50
Install Carpet	399.00
Tax (\$1,536.50 + 12% = )	184.38
<b>Total Monetary Order Requested</b>	<b>\$1,720.88</b>

As the joint move-in condition inspection report noted that the carpet in the entrance way to this rental unit had absorbed more than normal use at that time and was "old carpet", I reduce the landlord's eligibility for recarpeting by 10 % to reflect the state of the carpeting in the entrance way at the beginning of this tenancy. This reduces the landlord's eligibility to \$1,548.79 (i.e., \$1,720.88 x 90% = \$1,548.79).

Since the landlord would only be entitled to recover that portion of the remaining useful life of the remainder of the carpet, I find that the landlord is entitled to a monetary award for carpet replacement in the amount of \$1,045.43, representing 81/120 (67.5%) of the useful remaining life of the remainder of the carpet that was replaced.

While I accept the landlord's evidence with respect to the damage to the existing carpet in the rental unit, I do not find that the landlord has submitted sufficient evidence to demonstrate that the smell of cat urine so damaged the linoleum and/or tile floor that the

tenant should be responsible for its replacement. The landlord said that she had no idea when the flooring in the bathroom had last been replaced. Her manager testified that the bathroom flooring was likely about five years old because the entire building had been renovated at that time. Although I accept the landlord's evidence that it would be difficult to eliminate the odour of cat urine from this rental unit without removing and replacing the carpeting, I find that the landlord has not adequately demonstrated that the odour of cat urine also necessitated the removal of tile and/or linoleum throughout this rental unit. While the landlord may have wished to undertake these additional costs to upgrade the rental unit, I find that the landlord is not entitled to bill the tenant for these additional costs. I dismiss the landlord's claim for replacement of any flooring other than the carpeting in this rental unit without leave to reapply. For similar reasons, I dismiss the landlord's claim for recovery of the costs of removing and reinstalling the toilet in this rental unit without leave to reapply.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been partially successful in this application, I allow the landlord to recover the filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover damage arising out of this tenancy and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Replacement of Carpet	\$1,045.43
Less Security Deposit	-415.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$680.43</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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: August 08, 2012

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Residential Tenancy Branch