



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: MNDC FF  
For the tenants: MNSD

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for the return of their security deposit.

The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recovery the filing fee.

The tenants and an agent for the landlord (the “agent”) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. Both parties confirmed receipt of the other parties’ evidence package and that they had the opportunity to review the evidence prior to the hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to the return of all or part of their security deposit?

### Background and Evidence

The written tenancy agreement provided as evidence prior to the hearing indicates the tenants entered into a fixed term tenancy agreement which began on September 1, 2011, and was due to expire on August 31, 2012. Rent in the amount of \$750.00 was due on the first day of each month. A security deposit of \$375.00 was paid by the tenants at the start of the tenancy.

The tenants stated that they vacated the rental unit on April 29, 2012. Prior to vacating the rental unit, the tenants stated they provided written notice to the landlord advising the landlord that they would be vacating the rental unit on March 31, 2012.

The tenants stated that they paid a \$75.00 “end of lease fee” to the landlord so that they could break their lease. The agent confirmed that their company does charge that fee, however, has no record that the tenants paid the fee and confirmed that the written tenancy agreement does not indicate or refer to such a fee. The tenants did not provide supporting documentary evidence such as a receipt or statement from the landlord to corroborate their claim that such a fee was paid to the landlord.

The agent provided a copy of an email that confirmed the landlord received their notice, however, the tenants were responsible to pay for the lease until the property management company approved someone suitable to move in and there is no longer a vacancy. The agent stated that the landlord was able to secure new tenants who moved in on June 15, 2012. As a result, I find the tenancy end date was June 15, 2012.

The tenants are claiming for the return of their \$375.00 security deposit. The landlord is claiming \$1,371.80 consisting of the following:

Loss of rent for May 2012	\$750.00
Loss of half of June 2012 rent	\$375.00
Carpet cleaning costs	\$156.80
General cleaning costs	\$90.00
<b>TOTAL</b>	<b>\$1,371.80</b>

The tenants stated that the rental unit was not cleaned prior them moving in. The agent stated that he could not recall the state of the rental unit at the start of the tenancy. The agent did not provide evidence of a move-in or move-out condition inspection as

evidence. The parties agreed that the agent stated the tenants could deduct \$50.00 from the tenant's first month of rent to compensate them due to the cleaning that was required when the tenants moved into the rental unit.

The tenants stated that they left the carpets in better condition than the condition the carpets were in when they moved in. The tenants stated that they cleaned several ash and dirt marks in the carpet from the previous tenants when they moved in. The agent did not dispute the condition of the carpets. The agent could not provide specific details as to what specifically needed to be cleaned after the tenants vacated. The landlord did not provide specific receipts for carpet cleaning or general cleaning to substantiate their claim for carpet cleaning and general cleaning costs. The tenants provided a statement which was signed by a witness indicating that the rental unit was left in a clean condition. The witness also assisted the tenants cleaning the rental unit and had seen the condition of the rental unit prior to the tenants moving in. The agent did not dispute this portion of the tenants' testimony.

### Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Landlord's claim for loss of rent** – Section 45 of the *Act* states that a tenant may end a fixed term tenancy that is not earlier than the date specified in the tenancy agreement. As a result of the tenants vacating the rental unit early, **I find** the tenants breached section 45 of the *Act*, resulting in a loss of rent for the landlord. The landlord was able to secure a suitable tenant for June 15, 2012, which minimized the loss to the landlord. Therefore, **I find** the landlord has met the burden of proof and is entitled to monetary compensation of \$1,125.00 consisting of \$750.00 for rent owed for May 2012, and \$375.00 for half of June 2012 rent.

**Landlord's claim for carpet and general cleaning** – The landlord failed to provide invoices or receipts for carpet cleaning and for general cleaning. The landlord did provide a statement which references both expenses, however, they failed to provide the actual invoices or receipts to substantiate the claim. Furthermore, the tenant's allege that the rental unit was left in a clean state, and provided documentary evidence from a witness that stated the rental unit was left in a clean condition. The landlord did not provide condition inspection reports, photos, witness statements or affidavits to support the landlord's claim for carpet cleaning or general cleaning. Therefore, **I find** the landlord has failed to prove that the tenants violated the *Act*, regulation or tenancy agreement, and **I dismiss** the claim, without leave to reapply.

As the landlord was partially successful with their claim, I grant the landlord recovery of \$25.00 of their filing fee. The security deposit of \$375.00 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

As the tenants failed to provide evidence to support that they paid \$75.00 to the landlord as an "end of lease fee", **I dismiss** the tenant's application, without leave to reapply.

**I find** that the landlord has established a total monetary claim of **\$1,150.00** consisting of \$1,125.00 for rent owed and \$25.00 of the filing fee. **I authorize** the landlord to retain the full security deposit of \$375.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing of **\$775.00**. This order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

Conclusion

I find the landlord has established a total monetary claim of \$1,150.00 and may retain the security deposit in partial satisfaction of the claim.

I grant the landlord a monetary order for the balance owing in the amount of \$775.00.

I dismiss the tenant's application without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 25, 2012

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Residential Tenancy Branch