



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords: MND MNSD MNDC FF

For the tenant: DRI MNSD FF

### 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 landlord applied for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of double the security deposit and pet damage deposit, and to recover the filing fee.

The tenant and the landlord 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. The parties confirmed receiving the evidence packages from the other parties and that they had the opportunity to review the evidence prior to the hearing. The tenant submitted a CD, however, the CD could not be played on the computer equipment of the Residential Tenancy Branch and was excluded from the hearing as a result, in accordance with the Rules of Procedure.

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.

### Preliminary Matter

The tenant confirmed during the hearing that she was not disputing an additional rent increase. As a result, that portion of the tenant's application is dismissed without leave to reapply.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- Is the tenant entitled to a monetary order under the *Act*?
- What should happen with the security deposit and pet damage deposit?

### Background and Evidence

The parties agreed that an original month to month tenancy agreement began on October 2, 2006. A security deposit of \$375.00 was paid by the tenant on October 2, 2006. Rent in the amount of \$850.00 was due on the first day of each month. On December 3, 2010, a new tenancy agreement was signed which resulted in a pet damage deposit being paid by the tenant in the amount of \$150.00 on December 2, 2009.

The tenant vacated the rental unit on June 30, 2012. The parties agree that a move-out condition inspection was completed on June 30, 2012 and the tenant provided her written forwarding address on the move-out condition inspection report on the same date. The landlord filed for dispute resolution to keep all or part of the security deposit and pet damage deposit on Monday, July 16, 2012 as July 15, 2012 was a Sunday. The landlord filed her application the next business day.

The tenant has filed a monetary claim for \$961.83 which consists of the following:

Double original security deposit of \$375.00	\$750.00
Double original pet damage deposit of \$150.00	\$300.00
Interest on security deposit	\$11.83
Filing fee	\$50.00
<b>SUBTOTAL</b>	<b>\$1,111.83</b>
Less carpet cleaning of \$150.00	(\$150.00)
<b>TOTAL</b>	<b>\$961.83</b>

The landlord has filed a monetary claim for \$1,051.00 which consists of the following:

Carpet cleaning	\$145.00
Carpet replacement (\$2,265.00 quote less 40% estimated 6 year depreciation)	\$906.00
<b>TOTAL</b>	<b>\$1, 051.00</b>

During the hearing, the tenant agreed to pay the carpet cleaning costs. The receipt provided by the landlord showed the actual cost was **\$144.51**, which the tenant agreed to deduct from the security deposit.

The landlord provided several quotes for carpet replacement as evidence. The lesser amount of the quotes is in the amount of \$2,265.00. The landlord has stated that she estimates the carpets as being about 6 years old and is seeking \$906.00 which reflects a 40% depreciation in the value of the quote of \$2,265.00.

The landlord was asked about the age of the rental unit carpet. The landlord testified that the home was original built in 1996 or 1997 and was unsure if the carpets were the original carpets. The landlord did not have any documentation to prove that the carpets were ever replaced. The landlord submitted as evidence a witness statement where a witness writes that the carpets “could have been replaced” in 2005. The landlord claimed that in 2006 when the tenant moved in, the carpets were in good condition. The tenant disputes the landlord’s testimony by stating that the original carpets were only in “fair” condition, which is reflected on the move-in condition inspection report submitted as evidence.

The parties dispute the testimony of the other party in regards to whether the carpet required replacement. The tenant accepts that there was some carpet damage, however, disputes that the carpets had to be completely replaced. The landlord provided an e-mail from a floor contractor that states “...there is pet damage in a number of areas that precludes repair or continued use...”.

### Analysis

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

**Tenant’s claim for double the security deposit** – The parties agree that the tenant provided her written forwarding address on the day the tenancy ended, June 30, 2012.

Section 38 of the Act states:

## **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

**6) If a landlord does not comply with subsection (1), the landlord**

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

The landlord applied to retain all or part of the security deposit and pet damage deposit on Monday, July 16, 2012 as the 15<sup>th</sup> day was Sunday, July 15, 2012 and, therefore, not a business day.

Section 25 of the *Interpretation Act* states:

## **Calculation of time or age**

**25** (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

**(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.**

[emphasis added]

Given the above, **I find** that the landlord filed her application to retain all or part of the security deposit and pet damage deposit on the next business day and therefore, **I do not** grant the tenant double the security deposit and pet damage deposit. Therefore, **I dismiss** the tenant's application for return of double the security deposit and pet damage deposit, without leave to reapply.

**Landlord's claim for carpet cleaning and carpet replacement** – The tenant agreed during the hearing to have the cost of the carpet cleaning deducted from the security deposit in the amount of \$144.51 as indicated on the invoice submitted as evidence. As a result, **I find** the landlord is entitled to retain \$144.51 of the security deposit in full satisfaction of this claim.

#### 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 tenant. 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.

The landlord has provided several quotes for carpet replacement, the least expensive of which is \$2,265.00. The landlord has claimed for \$906.00 which reflects a 40%

depreciated value. I do not agree with the landlord's depreciated valuation of the carpets. Residential Tenancy Branch Policy Guideline 1 states that the useful life of carpets is 10 years. Even if I were to accept the landlord's testimony, the landlord testified that she estimated the carpet at being approximately 6 years old. That alone would result in a 60% depreciated value, and not a 40% depreciated value as claimed by the landlord.

Based on the landlord's further testimony that she is unsure of the age of the carpet, and has no proof of the actual age of the carpet or whether the carpet was replaced since the home was built, **I find** that the carpets have been used beyond their useful life of 10 years. I accept the landlord's testimony that the home was built in either 1996 or 1997 and without any evidence to prove the contrary, **I find** the carpets are, on the balance of probabilities, the original carpets that are approximately 15 or 16 years old. Therefore, **I find** the landlord is not entitled to any compensation for the replacement cost of the carpets as the landlord has not proven they have suffered a loss as the carpet has been used beyond its' useful years.

Although the tenant's application was dismissed, the tenant had to apply for dispute resolution for the return of a portion of her security deposit and pet damage deposit. Taking this into account, and considering the landlord was partially successful in her application, **I grant** both parties the recovery of half of their filing fee, in the amount of **\$25.00**. I **do not** grant a monetary order, however, as the amounts offset each other.

The tenant's security deposit of \$375.00 has accrued \$11.83 in interest since October 2, 2006 for a total security deposit of \$386.83. The tenant's pet damage deposit of \$150.00 has not accrued interest since December 2, 2009. The security deposit and pet damage deposit total is \$536.83 including interest, which the landlord continues to hold.

**I find** that the landlord has established a total monetary claim of **\$144.51** consisting of carpet cleaning which the tenant agreed to pay during the hearing. **I authorize** the landlord to retain **\$144.51** from the security deposit and pet damage deposits of \$536.83 in full satisfaction of the claim. **I order** the landlord to return the balance of the security deposit and pet damage deposit to the tenant in the amount of **\$392.32** within 15 days of receiving this Decision.

**I grant** the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$392.32**. Should the landlord fail to comply with my order described above, the monetary 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 \$144.51 and may deduct that from the security deposit and pet damage deposit, and I order the return of the security deposit balance to be returned to the tenant as described above.

I grant the tenant a monetary order in the amount of \$392.32.

I dismiss the landlord's application for carpet replacement compensation in full without leave to reapply.

I dismiss the tenant's application for double the security deposit and pet damage deposit 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: October 04, 2012

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Residential Tenancy Branch