



# 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 under the ***Residential Tenancy Act*** (the “Act”), dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage or cleaning in the rental unit, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form in advance of the hearing, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

### Background and Evidence

This tenancy began on November 1, 2011, with the parties entering into a written tenancy agreement. The agreement was for a one year, fixed term and was to end on October 31, 2012. The monthly rent was \$1,350.00, due on the first day of the month and the Tenants paid the Landlord a security deposit of \$675.00 and a pet damage deposit of \$675.00.

On or about July 20, 2012, a major wind and rain storm damaged the roof in the rental unit.

The Tenants were not happy with the way the Landlord was addressing the required repairs. They alleged there were other deficiencies at the rental unit which existed prior to the storm damage.

The Tenants wrote to the Landlord with a long list of repairs they wanted attended to, or if the Landlord did not agree to these repairs, they requested to be let out of the tenancy agreement. The Landlord agreed to let the Tenants out of the fixed term agreement and the tenancy ended on August 31, 2012, by mutual agreement.

The Landlord is claiming in this Application that the Tenants left the rental unit very dirty and did not make repairs they were responsible for. The Landlord is claiming for more than \$4,300.00 for the cost of repairs and cleaning. The repairs include replacing a carpet which is alleged was damaged by pets, fixing holes in walls, painting, and yard maintenance.

The Landlord also claims the Tenants failed to pay a water bill, which they are responsible for under the tenancy agreement.

In support of these claims the Landlord has provided copies of the tenancy agreement, correspondence between the parties, photocopied and faxed photographs, and an invoice for the water bill.

One Agent for the Landlord testified that they had not provided receipts or invoices for all the claims as most of the repair work has not been done. The Agent also testified that they had an invoice for cleaning, but it was not submitted as evidence.

In reply to the Landlord's claims, the Tenants agreed they owed the Landlord for the water bill. They also agreed they did not completely clean the stove or replace bathroom trim they removed. They also agree to carpet cleaning.

The Tenants claimed they had asked the Landlord for many repairs to be done to the rental unit from the outset of the tenancy, even prior to the storm damage. They testified they completed work order forms on the Landlord's website, but never had a reply from the Landlord. They also testified they were not able to print off copies of the work orders. They allege the Landlord's Agents were difficult to get in touch with and were avoiding their calls.

The Tenants testified that many of the Landlord's photographs were taken at the time the Landlord made an emergency inspection of the rental unit and were not all done at the end of the tenancy.

### Analysis

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

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.

In this instance, I find the Landlord has insufficient evidence to prove or verify the value of almost all of the losses or damages claimed. The Landlord failed to provide invoices or receipts for the work which was done, and furthermore, the Agents for the Landlord testified that most of the work had not been performed so they provided estimates of what they thought it would cost. In an instance where a party is relying on estimates for work not yet performed, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost \$600.00 to replace a carpet, yet there is no evidence, such as a quote from a carpet company, to support this estimate. These were, simply put, guesses made by the Landlord or its Agents.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the testimony of the Tenants that they agreed with certain portions of the Landlord's claims, I do allow the Landlord \$114.29 for the water bill, \$25.00 for cleaning the stove, \$35.00 for the missing trim, and \$350.00 for cleaning all the carpets in the rental unit. I reduce the amount granted towards the filing fee for the Application to \$25.00, as the Landlord had limited success in the Application.

I find that the Landlord has established a total monetary claim of **\$549.29**, comprised of the above described amounts and the \$25.00 fee paid for this application.

I order that the Landlord may retain \$549.29 from the deposits of **\$1,350.00** in full satisfaction of the claim and I order the Landlord to return the balance of **\$800.71**, to the Tenants forthwith.

I have granted and issued a monetary order under section 67 for the balance due of **\$800.71**, to the Tenants, which they must serve on the Landlord. If the Landlord fails to return the balance this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord failed to provide sufficient evidence, such as receipts or third party estimates, and most of the claim is dismissed.

The Landlord may keep \$549.29 from the deposits for items that the Tenants agreed to during the hearing and the Landlord must return the balance of \$800.71 to the Tenants.

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: December 19, 2012.

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Arbitrator  
Residential Tenancy Branch