



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNDC, MNR, MND, FF

### **Introduction**

This hearing was convened in response to cross applications by the parties for dispute resolution.

The landlord filed on October 22, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for compensation for loss – Section 67
2. A monetary Order for unpaid rent – Section 67
3. A monetary Order for damages to the unit – section 67
4. An Order to retain the security deposit - Section 38
5. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on October 15, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of double the security deposit - Section 38

Both parties attended the hearing and were given a full opportunity to present relevant evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?  
Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy is the subject of a written tenancy agreement with an addendum of 3 pages. The tenancy began on November 01, 2011. The tenant vacated September 29, 2012 in accordance with a Notice to End the tenancy for landlord's use. Rent in the amount of \$1400 was payable in advance on the first day of each month – adjusted by the tenancy agreement addendum. At the outset of the tenancy, the landlord collected

a security deposit from the tenant in the amount of \$600.00, which the landlord retains in trust.

The hearing did not have benefit of completed condition inspection reports, or whether there was agreement between the parties as to the administration of the security deposit at the end of the tenancy.

The relevant evidence in this matter is as follows. The parties agree that the tenant provided the landlord with a forwarding address in writing on October 15, 2012. The landlord subsequently filed an application for dispute resolution, in part, to retain the security deposit as set off for damages to the unit.

The parties agree that the tenant caused some damage to the unit during the tenancy. Specifically, the parties agree that the tenant caused a circular burn marking atop the kitchen countertop surfaced with Arborite / Formica. The landlord provided an estimate (of 3 higher estimates) to replace the countertop, in the amount of \$1821.18. The landlord testified the countertop is between 15 and 20 years old. The parties further agree that the tenant caused an irreparable stain in the carpeting which the tenant attempted to remediate by cutting a piece from a closet interior to 'patch' the stained piece in the more apparent site of the stain damage. The landlord seeks replacement of the carpeting in the estimate of \$675.02. The landlord testified the carpeting to be 12 years old. The landlord provided evidence in support of their claims. The tenant argued that the apparent and acknowledged age of the countertop and carpet must be factored in the landlord's claims for compensation. In particular, the tenant testified that given the carpeting was over 10 year in age, it had arrived at the end of its useful life according to Residential Tenancy Policy Guidelines, therefore they determined it was not inappropriate to patch the carpeting with a piece cut from the closet.

The landlord further claims that at the outset of the tenancy the tenant was afforded a discount of \$200 each month, by way of the addendum, in exchange for certain terms respecting the occupancy, maintenance, and pets of the rental property, by the tenant. The landlord claims the tenant did not comply with the terms for the monthly discount in rent, and effectively breached the tenancy agreement, therefore the landlord claims the tenant should be liable for the full amount of rent expressed in the tenancy agreement.

The tenant testified that throughout the tenancy they complied with the terms of the agreement and the conditions for the monthly discount, and at no time did they receive any notice they were not in compliance or in breach of their agreement.

### **Analysis**

On the preponderance of the evidence and testimony of the parties, I find the tenant's claim for return of *double* the original security deposit is not supported by evidence that the tenant provided the landlord with a written forwarding address as required by Section 38(1) of the Act until October 15, 2012 . I find that the doubling provisions of

the Act do not apply in this matter as the landlord filed an application to retain the deposit as set off for damages within the required 15 days to do so.

In regards to the landlord's claim for compensation for loss / damage, it must be emphasized that in order to claim for such loss under the *Act*, the party claiming the loss bears the burden of proof. Moreover, in this matter, the applicant must satisfy the following test as described in Section 7 of the *Act*:

1. Proof of the loss,
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Therefore, the claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy 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 monetary amount of the loss. The claimant must show that reasonable steps were taken to address their situation and to mitigate their losses.

I find that the landlord's claim for the damage to the countertop meets the majority of components of the above test for loss but does not reflect mitigation for wear and tear - for which the tenant is not responsible. As a result, I have consulted the Residential Tenancy Branch Policy Guideline respecting the useful life of work done or things purchased. I find that under *Furnishings*, the useful life of a kitchen countertop is 25 years. I accept the landlords estimate and discount it 68% (17 years). As a result I grant the landlord 32% of their estimate in the amount of **\$582.78**, without leave to reapply.

I find that the landlord's claim for the damage to the carpeting meets the majority of components of the above test for loss but equally does not reflect mitigation for wear and tear. As a result, upon consulting the Residential Tenancy Branch Policy Guideline respecting the useful life of work done or things purchased, I find that under *Finishes*, the useful life of carpeting is 10 years. I accept this information as a *guideline*, and I prefer the landlord's testimony that the carpeting still retained a residual value. I accept that for this reason it was not wholly appropriate for the tenant to fatally compromise the carpeting. As a result, I grant the landlord a nominal **\$100.00** of their estimate for carpet replacement, without leave to reapply.

In respect to the landlord's claim of the \$200 per month discount given to the tenant, I find the landlord has not provided sufficient evidence the tenant did not fulfill the tenancy agreement as each month passed during the tenancy. As a result, I find the

landlord does not meet the test for damage and loss in respect to this portion of their claim. **I dismiss** this portion of the landlord's claim, without leave to reapply.

As the landlord was partly successful in their claim I grant the landlord recovery of their filing fee of \$50.00, for a total award to the landlord of **\$732.78**. The security deposit will be off-set from the award made herein.

Landlord's award inclusive of filing fee	\$732.78
<i>Less original security deposit</i>	<i>-\$600.00</i>

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<b>Monetary Order for landlord</b>	<b>\$132.78</b>
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### **Conclusion**

**I Order** that the landlord retain the security deposit of \$600.00 in partial satisfaction of their claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$132.78**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

*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: January 16, 2013

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Residential Tenancy Branch

