



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, MNSD, OPL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to or cleaning of the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim, for an order of possession for Landlord use, 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, 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.

### Preliminary Issue

The Tenant has vacated the rental unit and therefore the Landlord no longer requires an order of possession. This portion of the Landlord's Application is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on June 1, 2010, with the parties entering into a written, standard term tenancy agreement. The monthly rent was set at \$995.00 and the Tenant paid the Landlord a security deposit of \$495.00 on April 30, 2010. One of the clauses in an addendum to the agreement required the Tenant to have the carpets professionally cleaned at the end of the tenancy.

On September 1, 2012, the Landlord and the Tenant entered into a written mutual agreement to end the tenancy on September 30, 2012. The Landlord compensated the Tenant by not charging rent for the month of September 2012.

The Landlord did not perform an incoming condition inspection report.

The parties disagreed about the time to perform the outgoing condition inspection report. The Landlord appears to have performed the outgoing report, however, there is no evidence the Landlord gave the Tenant a written notice of her final opportunity to attend an outgoing condition inspection report as required under the Act and regulation. The Tenant and Landlord exchanged emails and the Tenant refused to allow the Landlord to make a deduction from the security deposit for professional carpet cleaning.

The Landlord had the carpets professionally cleaned at the end of the tenancy and has provided a receipt for this in the amount of \$112.00

The Landlord also claims the Tenant damaged a water faucet in the rental unit. The Landlord has provided a picture of the faucet, which appears to have broken off at the stem. The Landlord testified he was not informed during the tenancy that the tap was broken.

In reply to the Landlord's claims for the carpet, the Tenant testified she cleaned the carpets. She submits that the carpet cleaning is normal wear and tear and she is not responsible to pay this.

The Tenant testified that the tap had been working fine all through the tenancy.

The Tenant testified she did not receive a notice from the Landlord to do the outgoing condition inspection report.

The Tenant further testified that she did not agree to have the Landlord keep any portion of the security deposit.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant has breached section 37 of the Act by failing to return the rental unit to the Landlord in a reasonably clean state.

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.

In this matter, I find the Tenant was required to have the carpets professionally cleaned at the end of the tenancy. This is based on the addendum to the tenancy agreement, which required the Tenant to have the carpets professionally cleaned. Furthermore, the policy guidelines for the Act require the Tenant to have the carpets professionally cleaned after a tenancy of a year or more. The Tenant did not do this. Therefore, I allow the Landlord **\$112.00** for the carpet cleaning.

As for the faucet, I find the Landlord had insufficient evidence to prove this was the Tenant's fault. By failing to perform an incoming condition inspection report the Landlord has no evidence of the condition the faucet was in at the start of the tenancy. Therefore, I find the Landlord has insufficient evidence to prove the Tenant broke the faucet.

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.

The evidence indicates that the carpets were not professionally cleaned when the Tenant left, as required under the Act and the tenancy agreement.

Therefore, I find that the Landlord has established a total monetary claim of **\$112.00**.

Since the Landlord failed to do the incoming condition inspection report, and did not use the proper notice for the outgoing condition inspection report, I do not award the Landlord the \$50.00 fee paid for this application. The Landlord should be aware that by failing to perform the incoming condition inspection report he extinguished his right to claim against the deposit under section 24 of the Act. However, as the Landlord is still retaining the security deposit I will offset the award for the carpet cleaning against the deposit and order the Landlord to return the balance to the Tenant.

I order that the Landlord may retain **\$112.00** from the security deposit of **\$495.00** in full satisfaction of the claim. The Landlord must return the balance of \$383.00 to the Tenant immediately.

I grant and issue the Tenant an order under section 67 of the Act and the policy guidelines, for the balance due of **\$383.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: January 22, 2013

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Residential Tenancy Branch