



# 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 dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, site or property and an order to keep all or part of the security deposit.

Both parties appeared, gave 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 at the hearing.

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

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?  
Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The tenancy began on November 1, 2011. Rent in the amount of \$940.00 was payable on the first of each month. A security deposit of \$470.00 was paid by the tenants. The tenancy ended on November 29, 2012.

The parties participated in a move-in inspection. The parties also participated in a move-out inspection, however, the tenant (AG) did not sign the report as the tenant felt the landlord was being unreasonable.

The landlord claims as follows:

a.	Carpet Cleaning	\$	84.00
b.	Cleaning	\$	40.00
c.	Oil removal and labour	\$	53.32
d.	Repair metal lock striker plate	\$	10.00

e.	Landscaping – weeding	\$ 616.00
f.	Registered mail and photo copies	\$ 30.11
g.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 883.43</b>

### Carpet Cleaning

The landlord testified that at the move-out inspection the tenant showed her an invoice for carpet cleaning. The landlord stated the carpet cleaning company is not listed in the yellow pages of the phone book and she does not believe the carpets were cleaned by a reputable company. The landlord stated she wanted the tenants to have the company fax her directly a copy of the invoice, however, that was never received. The landlord stated she had the carpets re-cleaned and seeks to recover the \$84.00. Filed in evidence is a copy of the receipt.

The tenant testified that they had the carpets cleaned as required. The tenant stated that this company was recommended to them by friends and just because the company is not listed in the yellow pages of the phone book does not mean they are not reputable. The tenant stated the move-out inspection indicated the landlord agreed the carpets were in satisfactory condition at the end of tenancy. Filed in evidence is a copy of the invoice.

### Cleaning windows

The landlord testified that the tenant did not clean all the inside of the windows or all the blinds and that she paid a cleaner \$40.00 to have them cleaned. Filed in evidence is a copy of the invoice for cleaning.

The tenant testified he was not at the move-out inspection, however, he was at the rental unit the day prior to the scheduled inspection and is certain all the windows were cleaned. The tenant stated they had several friends helping them do the cleaning.

Filed in evidence is a witness statement of (HM) on behalf of the tenants, the witness writes, “on Wednesday November 28<sup>th</sup> at 6pm at the (location), helped (tenants) move out of their rental unit and cleaned the house. The following is list of task I completed”,

[Reproduced as written.]

The list indicated that the blinds were dusted and the windows were cleaned.

### Oil removal and labour

The landlord testified there was no oil stains on the driveway at the start of the tenancy. The landlord stated when the tenants vacated the premises there was a large stain which must be removed. The landlord stated she purchased cleaner to remove the oil

at the local store and she will pay her contractor for one hour of labour to have the stain removed. The landlord stated the work has not been completed as the temperature needs to be warmer in order for the oil to be successfully removed from the driveway. The landlord seeks compensation in the amount of \$53.32. Filed in evidence are photographs of the driveway which show a large oil stain. Filed in evidence is a receipt for oil remover.

The witness for the landlord testified that once the weather is warmer he will be removing the oil stain from the driveway and he will be charging the landlord for one hour at the labour and the rate is \$25.00.

The tenant testified that it was not his vehicle leaking oil onto the driveway. The tenant stated he took his vehicle to the local mechanical shop and there was no leak discovered in his vehicle. Filed in evidence is a copy of the invoice.

The landlord responded that the co-tenant has a vehicle and it was likely their vehicle leaking the oil onto the driveway.

The tenant stated that he had nothing to say.

#### Repair metal lock strike plate

The landlord testified that the metal lock strike plate was missing on the patio door. The landlord stated that this was not inspected during the move-in inspection report, however, believes it was not missing. The landlord seeks to recover \$10.00.

The tenant testified that as they were moving into the rental unit the landlord's partner was working on the patio doors. The tenant stated the strike plate was never there during their tenancy.

#### Landscaping – weeding

The landlord testified the tenants were responsible to thoroughly weed the gardens as stated in the tenancy agreement. The landlord stated there are twelve gardens on the property and she has submitted photographs of eight of the gardens. The landlord stated she has not had the gardens weeded due to the ground being frozen, however, that is scheduled for April. The landlord stated she had a gardening company attend the property and they have provided an estimate for the work required to remove the weeds. The landlord stated she would be happy if the tenants would return to the property to weed the gardens, however, if they refuse she seeks compensation. Filed in evidence is a copy of an estimate in the amount of \$616.00. Filed in evidence are photographs of the gardens.

The tenant testified that he is not willing to come back to the property to do the weeding as he feels the landlord will be unreasonable. The tenant stated they are only

responsible to maintain the weeds to a reasonable level and not to a standard set by the landlord. Filed in evidence are photographs of the gardens.

The tenant's writes in his written submission "... another factor in our decision to weed whack instead of pull the weeds was the time of year."

[Reproduced as written.]

#### Registered mail and photo copies

The landlord writes in the application that she is seeks compensation for sending the application for dispute resolution by registered mail to the tenants and to recover the photocopy costs of preparing for the hearing.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

#### Carpet Cleaning

In this case, the landlord seeks to recover the cost of having the carpets re-cleaned as she does not believe the company use by the tenants was reputable. The tenants at the move-out inspection showed the landlord a receipt of proof of cleaning the carpets. The move-out inspection report indicated the carpets were left in a satisfactory condition.

I find the landlord has failed to prove that the carpets were not steamed cleaned by the tenants as required or that the carpets were not properly cleaned. Therefore, I find the landlord is not entitled to recover the cost of having the carpets re-cleaned.

#### Cleaning windows

In this case, the tenant denied the windows or blinds were left dirty, and the written submission of (HM) supports their position. The move-out inspection indicates there were several dirty windows inside the rental unit, however, the tenants did not agree with the move-out inspection. The evidence of the landlord was that she had to have several windows and blinds cleaned. The invoice submitted for cleaning indicates there were four inside windows and that were some blinds required to be cleaned. There was no photographic evidence submitted.

Even if I accept the evidence of the landlord that the tenants did not clean all of the windows and all of the blinds inside the entire rental unit, I find that the tenants did leave the unit reasonably clean as required by section 37 of the Act. Therefore, I find the landlord is not entitled to recover the cost of cleaning the four windows or blinds.

#### Oil removal and labour

In this case, the move-in inspection indicated the driveway did not have any oil spots at the time the tenants took possession of the rental property. The photograph evidence submitted by the landlord support that there is a large oil spot on the driveway, and it would appear from the photographs that the oil had been dripping from a vehicle onto the driveway over an extended period of time. The evidence of the tenant was that it was not his vehicle. The tenant did not deny the landlords response when she claimed it was the co-tenants vehicle.

Even if I accept the evidence of the tenant that it was not his vehicle, it is reasonable to conclude that it was either the co-tenant's vehicle or from a vehicle of a guest that they have allowed onto the property. As a result, I find the tenants have breached section 37 of the Act, when they failed to have the oil removed off the driveway. I find the landlord is entitled to recover the cost of the materials and labour costs in the amount of **\$53.32**.

#### Repair metal lock strike plate

In this case, the parties agreed the metal lock strike plate was not checked during the move-in inspection. The evidence of the tenant was that the patio door was being worked on by the landlord's partner when they were moving into the unit and the strike plate was never installed. In the absent of any further evidence from the landlord, such as a photograph of the strike plate in place at the time the tenancy commenced. I find the landlord has failed to prove that a damage or loss exists due to the actions of the tenants. Therefore, I find the landlord is not entitled to recover the cost of the missing metal lock strike plate.

Landscaping – weeding

The tenancy agreement provides a term that the tenants are required to weed the gardens. The evidence of the landlord was that the tenants did not remove the weeds as required and she has obtained an estimate by a landscaping company to have the work properly completed. The evidence of the tenant was that the beds were cleaned the best they could, however, the ground was frozen when they vacated the property. The tenant's writes in his written submission that a weed whacker was used instead of pulling the weeds. The photographic evidence submitted by the parties supports that the gardens were not weeded to a reasonable standard as required by the Act. Using a tool, such as a "weed whacker" does not constitute weeding a garden.

Based on the above, testimony, written submission and the photographic evidence, I find the tenants did not properly weed the gardens to a reasonable standard as required by their tenancy agreement or the Act. Therefore, I find the tenants have breached section 37 of the Act, when they failed to properly remove the weeds from the gardens to a reasonable standard.

The landlord has provided an estimate, however, the estimate also included the cost of a weed control which is to be applied to all cracks and crevices in the edges and sidewalk areas. I find the tenants are not responsible for that cost.

Therefore, I will allow the landlord a nominal amount for weeding the gardens in the amount of **\$350.00**.

Registered mail and photocopy costs

In this case, the landlord is claiming cost of preparing for the hearing, such as registered mail and photocopy fees. I find there are no provisions under the Act that would allow the landlord to recover the cost of serving hearing documents or preparing for evidence to support her claim. Therefore, I find the landlord is not entitled to recover the cost of registered mail and photocopy costs.

I find that the landlord has established a total monetary claim of **\$453.32** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain from the security deposit (\$470.00) the sum of **\$453.32** in full satisfaction of the claim and I grant the tenants an order for the balance due of the security deposit of **\$16.68**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court, if the landlord fails to return the amount due to the tenants.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are granted an order for the balance due of their security deposit.

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: March 14, 2013

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Residential Tenancy Branch

