



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; FF

### **Introduction**

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties 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 to me.

The Landlord testified that she mailed the Notice of Hearing documents and copies of her documentary evidence to each of the Tenants, by registered mail, on November 9, 2012. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. The Tenant admitted service of the documents.

The Tenant testified that the Tenants' documentary evidence was hand delivered to the Landlord on January 30, 2013. The Landlord admitted service of the documents.

### **Issues to be Decided**

- Is the Landlord entitled to compensation for the cost of replacing the carpets and a mirrored door at the end of the tenancy?
- May the Landlord apply the security deposit towards partial satisfaction of her monetary award?

### **Background and Evidence**

This tenancy began on February 8, 2008, and ended on October 31, 2012. The Tenants paid a security deposit in the amount of \$422.50 on January 14, 2008.

The carpets and the mirrored door were new at the beginning of the tenancy. The Landlord testified that at the end of the tenancy the carpets were stained and had cigarette burns in them. The Landlord stated that the professional carpet cleaner advised her that the oil stains in the dining room and other black and red stains could

not be removed from the carpet, nor could the cigarette burns be repaired. She stated that the mirrored door was cracked and had to be replaced. A copy of the Condition Inspection Report was provided in evidence, along with copies of the invoices for the cost of purchasing and installing the carpets and mirrored door.

The Landlord provided photographs of the carpets and the cracked mirrored door in evidence.

The Landlord seeks to recover a portion of the cost of replacing the carpets and the cost of replacing the mirrored door, as follows:

Portion of the cost of replacing the carpets (\$1,526.56 total)	\$800.00
Cost of new mirrored door	<u>\$120.00</u>
Total	\$920.00

The Tenant agreed that the rental unit was in perfect condition when the Tenants moved in. He testified that he did not agree to the damages listed on the Condition Inspection Report, because there were no burns on the carpets. He stated that the carpet cleaner told him that the stains would come out and therefore he was prepared to agree to pay \$77.28 for the cost of cleaning the carpets. The Tenant stated that the Tenants smoked, but never inside the rental unit.

The Tenant stated that he believed the normal life for carpets was 5 years and that the carpets had outlived their life in any event.

The Tenant provided photographs in evidence, which he stated clearly show that there were no burns in the carpets. When asked about the Landlord's photographs, he stated that there are 50 units in the building and that the Landlord's photographs must be of another unit.

The Tenant testified that 10 days after the Tenants moved in, they noticed a small crack in the mirrored door. He testified that he told the (then) caretaker about the crack. The Tenant stated that he did not put it in writing. The Tenant stated that over time the small crack became larger.

The Landlord stated that there is no record of the Tenant complaining about a small crack in the mirrored door at the beginning of the tenancy. She submitted that the photographs provided by the Tenant were blurry and of poor quality and not a good indication of the condition of the carpets at the end of the tenancy.

## **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, **the balance of probabilities**.

The Tenants disputed the Landlord's assessment of damages at the end of the tenancy. There is no disagreement between the parties with respect to the general cleanliness and repair of the rental unit at the end of the tenancy, other than the carpets and the mirrored door. The parties agree that the remainder of the rental unit was left in reasonably clean condition, and undamaged except for reasonable wear and tear.

The Condition Inspection Report clearly indicates that there are burns and stains on the carpets. The Tenants' written explanation for why they did not agree with the Report states, in part:

“We started living there on February 2008, and after almost five years it the apartment we are vacating is in very good conditions, and there is the normal wear and tear of the rental unit.”

(reproduced as written)

This explanation was written at the time of the Condition Inspection. There is no mention of burns or stains in the Tenants' explanation, only the submission with respect to “normal wear and tear”. In addition, during the Hearing the Tenant testified that the carpets had lived out their normal life and that they would have had to be replaced in any event. He was under the impression that the normal life of the carpets was 5 years.

The Tenant's photographs were photocopies and not clear. The Landlord's photographs clearly indicated burns and stains, as is indicated on the Condition Inspection Report.

I find, on the balance of probabilities, that there were stains and burns on the carpet at the end of the tenancy. Residential Tenancy Branch Policy Guideline 40 fixes the normal life for carpets at 10 years. Therefore, I allow this portion of the Landlord's claim in the amount of **\$763.28** (half the cost of replacing the carpets).

A Condition Inspection Report is evidence of the state of cleanliness and repair of a rental unit at the beginning of the tenancy, absent a preponderance of evidence to the contrary. In this case, the Tenant stated that the mirror had a tiny crack at the beginning of the tenancy, contrary to the Condition Inspection Report. However, the Tenants did not put this concern in writing to the Landlord. Therefore I find, on the

balance of probabilities, that the mirror was damaged by the Tenants. I do not find this damage to be "reasonable wear and tear". Therefore, I allow this portion of the Landlords claim in the amount of **\$50.00**, allowing for depreciation.

I find that the Landlord's agent has established a monetary award in the amount of **\$813.28**. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit of **\$422.50** and accrued interest towards partial satisfaction of the Landlord's monetary award. Interest has accrued in the amount of **\$5.80**.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Monetary award for damages	\$813.28
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$863.28
Less security deposit and accrued interest (\$422.50 + \$5.80)	<u>- \$428.30</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$434.98</b>

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$434.98** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 08, 2013

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Residential Tenancy Branch

