



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MND

### Introduction

This hearing was convened by way of conference call in response to the tenants review consideration application that was successful on March 19, 2013 and a review hearing was granted and restricted to review two issues from the previous decision concerning damage to the rental unit.

At the Review Hearing the tenants did not appear but appointed Counsel for the tenants to present the tenants' submission. The landlords attended the Review Hearing and presented their submissions. The landlords provided additional evidence based on the tenants' application for review to the Residential Tenancy Office and to the tenants prior to this Review Hearing.

### Preliminary Issues

Section 82(2)(c) of the *Act* states that the director may conduct a review by holding a new hearing. Section 82(3) states that following the review, the director may confirm, vary or set aside the original decision or order.

This decision is in addition to the Decision made on February 14, 2013 and concerns two issues only from the original decision.

Issue(s) to be Decided

Is the Decision and Monetary Order issued on February 14, 2013 to be confirmed, varied or set aside?

Background and Evidence

This Review hearing was held to consider the tenants submissions that the tenants did not have a copy of the receipt for the new carpets prior to the hearing and that the tenants could not, with reasonable diligence, present information concerning that in response to the landlords' evidence. Counsel for the tenants submits that the tenants have received information from the carpet company concerning warranties held on the carpets for stains and soiling. Counsel for the tenants submits that this warranty should have enabled the landlords to have had the carpets replaced under warranty therefore not filing against the tenants for the costs to replace the carpets.

The landlords submit that the warranty issued with the carpets in 2008 does not cover rental units and only provides coverage for owner occupiers of the unit. The warranties also do not cover stains caused by pets. As these are pet stains on the carpets caused by the tenants' dogs then the warranty would not be valid. The landlords have provided the warranties for both the bedroom carpet and the basement carpet in documentary evidence.

Counsel for the tenants accepts that these are the warranties for the carpets in question.

The second issue raised at the Review Consideration was that the estimate for replacement of the basement carpet was for \$10,856.40 and included the carpet in the hallway, stairs and two bedrooms, office and storage area. It was unclear to the Arbitrator conducting the Review Consideration whether the original Arbitrator intended to grant compensation for the additional areas or whether the award was limited to the

family room. The Arbitrator did not find that this discrepancy constitutes fraud on the part of the landlords but found it was an issue that should be reviewed at this Review Hearing to ensure it was not an oversight that could be corrected by the original Arbitrator pursuant to s. 78 of the *Act*.

As I was the original Arbitrator at the hearing held on February 13, 2013 I find it is reasonable to consider this issue. Counsel for the tenants submits that the tenants' position is that the carpet in the main area needs to be replaced. Counsel for the tenants submits that this area consists of the sitting room, billiard room and hallway and these combined areas are less than 1000 square feet. Counsel for the tenants submits that there is no evidence to show that the bedrooms, office, storage room or stairs required replacement carpet as there is no evidence of staining on these areas and each of these areas are separated from the main area. Therefore the landlords' argument that the carpet needed to match and flow through these areas is defunct. Counsel for the tenants submits that the landlords have still not replaced the carpets in the basement area. Counsel submits that the landlords' claim should therefore be adjusted downwards to allow for the fact that there is no evidence to support their claim to replace the bedrooms, office, and storage area and stair carpets.

Counsel for the tenants submits evidence from the realtor showing different square footage measurements and questions the landlords' estimated measurements in light of these realtor listings.

The landlords submit that the carpets in bedroom two were stained by dog urine as shown in the landlords' original evidence and supported by the information given to the landlords by the tenants' carpet cleaner who was only asked to clean certain areas of the carpets that were stained. The landlords submit that as this is a multimillion dollar home and people expect the carpet to match throughout the basement level. Due to the lapsed time between the original carpets being laid and the tenants moving out the dye lot number of the replacement carpets will not be the same and potentially there will be a different shade of carpets in areas not stained by the tenants' dogs. Therefore the

landlords submit that all areas downstairs must be replaced. The landlords dispute the tenants' claim that the area is only 1000 square feet. The landlord has submitted a detailed plan showing the measurements of the basement and these plans show a square yardage for each area. The landlords agree that the overall measurement required for new carpet of 220 square yards includes the extra carpet required for pattern matching, seaming and cutting into angled rooms. The landlords submit that they inquired about patching areas of this carpet but were advised that this would be noticeable and the recommendation was to replace the whole carpet. The landlords submit that the realtor listing measurements are only estimated and there is a disclaimer on the listing to show that these are not accurate measurements.

The landlords submit that the stair carpet flows into the main room and must also be of the same dye lot number or the color difference would be noticeable. The landlords submit that they have not yet been able to change the carpets in the basement level as new tenants moved into the property and the disruption to those tenants would be too great. The carpets will be changed when those tenants move from the unit on November 01, 2013. The carpet was however replaced in the master bedroom.

The landlords submit that the depreciation of 20 percent that was deducted from the landlords' original claim should not have been deducted. The landlord submits that they received information from a flooring company concerning a court decision made after the Kelowna fires in 2003. This decision did not allow insurance companies to use depreciation of the carpets for replacement costs and the landlords wonder if they would qualify under the same ruling and the 20 percent should not be deducted. The landlords have not submitted any evidence to support this.

### Analysis

I have reviewed the evidence before me, including the new evidence presented for this Review Hearing and the submissions of both parties. With regard to the issues with the warranties for the carpets; I find the warranties presented by the landlords to be the

warranties issued with the carpets in 2008 when the carpets were first fitted into this home. These warranties clearly show that these carpets are only covered if the property is owner occupied and do not cover staining caused by pets. I therefore found the warranties obtained by the tenants to have no significance to these carpets under dispute and my original decision in this matter stands.

With regard to the tenants' claim that they have evidence that the basement space is not the size claimed by the landlords. I find the landlords' evidence supports the size of the basement level of this property. Detailed plans have been provided showing the square yardage of carpet required in each area. I further find that due to the pattern on the carpet, the shape of the rooms and the seaming required that more carpet would have to be purchased to accommodate these areas.

With regard to the tenants' claim that the landlord has no evidence to show that the two bedrooms, office, storage room and stairs were stained by the tenants' dogs and therefore should not require replacement; I have considered this evidence and find that this was an oversight on my part in the original decision concerning some of these areas in the basement. I find the landlords have shown that one of these bedrooms did have some dog urine stains however there is no evidence to show that the second bedroom, the office, the storage area or the stairs were stained with pet urine. I further find that as the second bedroom, the office and the storage rooms are separate rooms then any dye lot difference would be less noticeable in these areas and the tenants should not be held responsible for the cost of replacement carpet in the second bedroom, the storage room or the office room. However, I uphold the decision made that the stair carpet flows into the living area and any dye lot change would be noticeable where the stairs carpet meets the living room carpet.

I have considered the landlords' claim that the 20 percent deducted for depreciation should not be deducted. I refer the landlords to the Residential Tenancy Policy Guidelines # 40 which refers to the useful life of building elements and is a guide used to calculate depreciation. This table shows that the useful life of a carpet is 10 years. As

the carpet was two years old I have deducted 20 percent from the total claimed. The landlords have provided no supporting evidence to show a precedent was set in the courts concerning carpet depreciation.

Using calculations provided for each separate room I therefore vary my original Decision and Order to take into account this adjustment to the landlords' claim. I find the bedroom; the office and the storage area have a total square yardage of 37.6 square yards; I have deducted this yardage from the total claimed for of 220 leaving a balance of 182.4 square yards; I have calculated the cost per square yard at \$55.27 and deduct the sum of \$2,078.15 from the overall cost of the carpets of \$12,159.16; This leaves a balance of \$10,081.01; less 20 percent for depreciation; leaving a balance due to the landlord for the basement carpet of \$8,064.81. The cost for the master bedroom carpet remains unchanged.

The landlord is therefore entitled to a Monetary Order as follows:

Replacement carpet in the master bedroom	\$2,510.33
Replacement carpet in the basement level not including one bedroom, the office and the storage area	\$8,064.81
Filing fee	\$100.00
Less security and pet deposits	(-\$5,500.00)
Total amount due to the landlords	\$5,175.14

### Conclusion

This decision is made in addition to the decision issued on February 14, 2013 pursuant to s. 82(3) of the *Act*. The original Decision and Order issued on February 14, 2013 is **HEREBY VARIED**.

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$5,175.14**. The order must be served on the Respondents and is enforceable through the Provincial Court 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: April 23, 2013

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Residential Tenancy Branch

