



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

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

Only an Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent for the Landlord submitted into evidence a receipt for registered mail and testified they served the Notice of Hearing and Application on one of the Tenants by registered mail, sent on February 8, 2013. Under the Act documents served by registered mail are deemed served five days later. I find that one of the Tenants has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on or about July 18, 2012, with the parties agreeing to rent in the amount of \$750.00 per month. The Tenants paid a security deposit of \$375.00, on or about July 18, 2012.

Based on the affirmed testimony and the evidence provided by the Landlord, I find that the parties were involved in one prior hearing and the Tenants were ordered to immediately vacate the rental unit under section 56 of the Act, as the Landlord was granted an early end of the tenancy. The Tenants vacated the rental unit on January 18, 2013.

As the Agent for the Landlord referred to this prior hearing during the matter before me, I have referenced the file number for that hearing on the cover page of this Decision.

The Agent for the Landlord testified that the Tenants did not clean the carpets, or the rental unit, and left garbage and debris behind in the rental unit. The Landlord claims \$72.80 for carpet cleaning, and \$36.00 for cleaning the unit and for removing debris.

The Landlord also alleges that one of the Tenants deliberately “stomped” on a portion of the floor to cause a noise disturbance to the renters in the unit below. The Landlord alleges that the “stomping” of the Tenant caused the floor of the rental unit to become cracked, and further caused damage to the ceiling of the rental unit below the subject rental unit. The Landlord claims \$200.00 for repairing the crack in the living room floor and \$448.00 for repairing the ceiling and wall of the rental unit below.

In support of the above claims, the Landlord submitted in evidence photographs of the subject rental unit and the rental unit below; receipts and invoices for the amounts claimed; copies of the condition inspection reports; and a security deposit refund worksheet.

### Analysis

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

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 or losses and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. 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.

Based on the photographs and evidence of the Landlord, I find the Tenants breached section 37 of the Act by failing to return the rental unit to the Landlord in a reasonable clean state. I find the Landlord has established that the Tenants did not clean the unit, or remove debris, which the Landlord had to do, and this has caused losses to the Landlord. I am also satisfied by the evidence that the carpets were not steam cleaned when the Tenants left, and these required cleaning.

Nevertheless, I dismiss the portion of the Application dealing with the alleged damage to the floor of the rental unit, and ceiling and walls of the unit below.

While the Agent for the Landlord explained that in the prior hearing the Tenants admitted to “stomping” on the floor, this testimony or admission was not set out in the prior decision. The prior decision finds the Tenants unreasonably disturbed other occupants by tripping the fire alarms at the building, but nothing is recorded about the alleged stomping. The Agent for the Landlord also argued that the evidence of stomping was submitted for the last hearing; nevertheless, that evidence was not submitted for this hearing. The Landlord should have submitted this evidence separately, as it is not the practice of the branch to bring forward evidence from one matter into another. For these reasons I find the Landlord has insufficient evidence to prove the Tenants caused this damage or breached the Act in this particular claim.

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.

Having found the Tenants breached the Act by failing to clean and remove debris, and being satisfied on the evidence that the Landlord has proven a loss due to the

breaches, I find the Landlord has established claims totalling **\$158.80**, comprised of \$72.80 for carpet cleaning, \$36.00 for cleaning the unit and removing debris, and \$50.00 for the filing fee for the Application.

I order that the Landlord may retain the \$158.80 from the deposit of **\$375.00** in full satisfaction of the claim, and I order the Landlord to return the balance of **\$216.20** to the Tenants.

I grant and issue the Tenants an order for this amount. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord has established claims for cleaning and removing debris from the rental unit, and for carpet cleaning. The Landlord is allowed to deduct these from the security deposit and must return the balance of the security deposit to the Tenants.

The claims of the Landlord regarding damage to the floors, walls and ceiling are dismissed as there was insufficient evidence to prove the Tenants caused this damage.

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: May 03, 2013

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Residential Tenancy Branch