



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain the security deposit in full satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 10, 2013, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on June 25, 2011. Rent in the amount of \$1,090.00 was payable on the first of each month. A security deposit of \$545.00 was paid by the tenant. The tenancy ended on February 15, 2013.

The landlord claims as follows:

a.	Damage carpet	\$ 545.00
b.	Recover filing fee	\$ 50.00
	Total Claimed	\$ 595.00

The landlord testified that at the start of the tenancy the carpets were inspected and it was noted that there was a stain on the carpet in the den. The landlord stated the other carpets were in good shape.

The landlord testified at the end of the tenancy there were additional stains on the carpets and when she had a carpet company come out to inspect the carpets she was told by them that the stains were set and would not come out. The landlord stated it cost \$2,300.00 to have the carpets replaced and installed.

The landlord testified that she does not know the age of the carpets as they were in the rental unit when she purchased the property.

### 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, that is, a balance of probabilities.

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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The evidence of the landlord was that the carpets had one noted stain at the start of the tenancy. The evidence of the landlord was at the end of the tenancy the carpets had additional stains and the carpet company informed her that they would not come out and the carpets would need to be replaced. The evidence was the landlord did not know the age of the carpets, however, stated they were in good shape at the start of the tenancy, other than the original stain in the den.

I accept the undisputed testimony of the landlord that the tenant damaged the carpets as indicated above. However, under the Residential Tenancy Policy Guideline #40, if an item was damaged by the tenant the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

In this case, I have determined by the guidelines that carpets have a useful life span of ten years. The landlord does not know the age of the carpets as they were in the unit when the property was purchased.

I find the landlord has provided insufficient evidence to support her claim, as I am unable to determine if the useful life span of the original carpets had expired or if the tenant would be responsible for any portion of the depreciated value. As a result, I find the landlord has failed to prove a loss exists. Therefore, I dismiss the landlord's claim to retain the security deposit for damages. The landlord is not entitled recover the cost of filing from the tenant.

As a result of the above, I order the landlord to return to the tenant their security deposit in the amount of **\$545.00**. The tenant is granted a monetary in that amount, should the landlord fail to comply with my order.

### Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order, should the landlord fail to return the security to the tenant.

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: May 29, 2013

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Residential Tenancy Branch

