



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, 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 partial 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 to the tenant forwarding address on March 8, 2013, the tenant did not appear. A Canada post tracking number was provided as evidence. A copy of the tenant's text message of the forwarding address was provided.

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

Are the landlords entitled to monetary compensation for damages?  
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on December 1, 2012. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant. The unit rented by the tenant was fully furnished. The tenancy ended on February 2, 2013.

The landlord testified the tenant breached the terms of the tenancy agreement by smoking in the rental unit and as a result of that breach the entire unit was required to be washed and the fabric of the furniture needed to be cleaned. The landlord stated the tenant also did not attempt to do any cleaning at the end of the tenancy. Filed in evidence are photographs of the rental unit. Filed in evidence is a receipt for cleaning costs.

### 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.

Section 37 of the Residential Tenancy Act states:

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In this case, the evidence was then tenant did not clean the unit at the end of the tenancy and that the tenant breached the tenancy agreement by smoking in the unit. The photographs submitted as evidence supports the landlords' position. As a result, I find the tenant breached section 37 of the Act, when they failed to clean the unit to a reasonable standard. Therefore, I find the landlords are entitled to compensation for the cost of the cleaning in the amount of **\$500.00**.

I find that the landlords have established a total monetary claim of **\$550.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order the landlords to retain the security deposit of **\$ 500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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

