



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MND, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for repairs, cleaning and painting of the rental unit. The tenant applied for the return of the security deposit, moving costs, mailing costs and compensation. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant testified that she had not received evidence with regard to the costs of replacing the carpet. The landlord agreed that she had not sent this portion of the evidence to the tenant. The landlord stated that she had faxed this evidence to the Residential Tenancy Branch, but during the hearing this evidence was not before me. Since the tenant was not served with this portion of the evidence, even if I receive it, it will not be used in the making of this decision.

At the start of the hearing, the tenant informed me that she had received a money order from the landlord in the amount of the security deposit. Accordingly, the tenant's application for the return of the security deposit is moot.

### **Issues to be decided**

Is the landlord entitled to a monetary order for repairs, cleaning and painting of the rental unit? Is the tenant entitled to moving costs, mailing costs and compensation?

### **Background and Evidence**

The tenancy started on March 01, 2005 and ended on March 01, 2013. The monthly rent at the end of the tenancy was \$780.00 payable on the first of each month.

The tenant testified that at the start of tenancy, the carpets were not clean and she agreed to clean them in order to move in prior to the first day of tenancy. Both parties agreed that there were red felt pen marks on the carpet but did not agree on the extent of this damage. The landlord stated that at the end of the tenancy, the unit was left in a condition that needed cleaning, while the tenant stated that she had cleaned the unit prior to moving out. The tenant agreed that she did not clean the carpets and stated that the reason for not doing so was that the carpets were not clean at the start of tenancy.

The tenant agreed that she had made holes in the walls to hang pictures but stated that these were pin holes. The landlord stated that the holes were large enough to accommodate screws. The tenant agreed that she had made holes in the closet doors to hang clothes.

On January 30, 2013, the landlord gave the tenant notice to end tenancy for landlord's use of property with an effective date of April 01, 2013. On February 12, 2013 the tenant gave the landlord notice to end the tenancy effective March 01, 2013. The tenant stated that she paid rent for February and did not receive compensation for the last month of tenancy.

The landlord is claiming the following:

1.	Cost of paint	\$332.11
2.	Carpet replacement	\$1,751.36
3.	Labor to remove carpet, fix walls and doors, cleaning	\$2,725.75.00
4.	Labor to paint	\$900.00
5.	Filing fee	\$50.00
	Total	<b>\$5,759.22</b>

The tenant is claiming the following:

1.	Moving costs	\$432.43
2.	Lost wages	\$318.72
3.	Mail forwarding	\$53.70
4.	Mailing costs	\$10.25
5.	Compensation	\$780.00
6.	Filing fee	\$50.00
	Total	<b>\$1,645.10</b>

## **Analysis**

### **Landlord's application:**

#### **1. Cost of paint - \$332.11**

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the interior paint. As per this policy, the useful life of interior paint is four years. The landlord painted the rental unit in 2004 and therefore by the end of the tenancy in March 2013, the paint had outlived its useful life. Accordingly the landlord must bear the cost of painting the rental unit.

#### **2. Carpet replacement - \$1,751.36**

Pursuant to section 40 of the *Residential Tenancy Policy Guideline* the useful life of carpet is ten years. The landlord had replaced the carpet in 2004 and therefore by the end of the tenancy the carpet was nine years old and had one year of useful life left.

Section 3.5 of the rules of procedure states that copies of any documents or other evidence that the applicant intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and must be served on the other party. The landlord did not provide evidence to support this claim, to the tenant and therefore even if I receive this evidence, I am unable to use it.

Both parties agreed that there were red felt pen marks prior to the start of the tenancy.

For the above reasons and since the carpet had just one year of useful life left, I find that the landlord must bear the cost of replacing the carpet.

#### **3. Labor to remove carpet, fix walls and doors, cleaning - \$2,725.75**

The landlord did not provide a breakdown of the total amount and also did not file a receipt to support the quantum of her claim. The landlord stated that the labor included taking the carpet to the dump, pruning trees, raking leaves and fixing screens. The tenant stated that she installed some screens and there were holes in others at the start of tenancy. The tenancy agreement is silent regarding the pruning of trees.

The parties offered contradictory testimony regarding the condition of the unit. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Inspections at the beginning and end of tenancy were not done and therefore there were no reports to refer to, in order to establish the condition of the rental unit prior and after the tenancy and to determine the damage if any, that the tenant was responsible for.

Based on the testimony of both parties, I find that the tenant did make holes in the closet doors and the walls. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the landlord \$100.00 towards the fixing of the holes in the walls and closet.

Since there is inadequate evidence to support the balance of the landlord’s claim, I dismiss it.

4. Labor to paint - \$900.00

As stated above, the landlord is not entitled to the cost of painting and therefore must bear the cost of labor to paint.

5. Filing fee - \$50.00

The landlord has not proven the majority of her claim and must therefore bear the cost of filing her application.

Overall the landlord has established a claim of \$100.00.

Tenant’s application:

1. Moving costs - \$432.43    2. Lost wages - \$318.72

By not disputing the notice to end tenancy, the tenant agreed to move out and therefore is not entitled to the cost of moving.

Mail forwarding - \$53.70    4. Mailing costs - \$10.25

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the tenant’s claim for the above are dismissed.

### 3. Compensation - \$780.00

The tenant received a notice to end tenancy under section 49 (*landlord's use of property*) of the *Residential Tenancy Act*. Section 51 states that a tenant who receives a notice to end a tenancy under section 49 (*landlord's use of property*) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 50 states that If a landlord gives a tenant notice to end a periodic tenancy under section 49 the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice,

A notice under this section does not affect the tenant's right to compensation under section 51 (*tenant's compensation: section 49 notice*).

In this case the tenant ended the tenancy prior to the end date on the landlord's notice to end tenancy, by giving the landlord at least ten days notice to end the tenancy. Pursuant to section 50, the tenant is still entitled to receive compensation in the amount of one month's rent. Therefore I award the tenant \$780.00.

### 4. Filing fee - \$50.00

Since the tenant has proven a portion of her case, I award her \$25.00.

Overall the tenant has established a claim of \$805.00.

The landlord has established a claim of \$100.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$705.00, which consists of difference between the established claims of both parties. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$705.00**.

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: June 26, 2013

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Residential Tenancy Branch