



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, MNDC

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The tenancy began on December 1, 2005 and ended on July 18, 2012. The tenants were obligated to pay \$875.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$437.50 security deposit.

Counsel submitted a letter stating that this matter should not proceed as it falls under res judicata as it has been previously addressed in a separate hearing. I agree with counsel to an extent, the matter of the security deposit had been addressed on December 11, 2013 and will not be addressed in this hearing however the landlord is still entitled to pursue a monetary order separate and apart from the security deposit as they are still within the legislated timeline.

I address the landlord's claims and my findings around each as follows.

**Landlords Claim** – The landlord is seeking \$2441.15 for the replacement of carpet in the suite and \$446.88 for the removal of miscellaneous items for a total claim of \$2888.03. The landlords stated that in July 2012 a city water line backed up into the unit causing water damage to many areas of the suite. The landlord stated the unit was newly renovated in 2005 just prior to the tenant moving in. The landlords stated that the tenant did not take care of the carpet and due to its poor condition had to be replaced by the insurance company. The landlords stated that the insurance company paid for \$6414.21 of the total \$8815.07 in damage. The landlords stated that the tenant left behind many personal items that required the landlords to hire a rubbish removal company to clean up and dispose of the items.

The tenants counsel disputes this claim in its entirety. Counsel submitted that this was an unfortunate incident that both parties suffered a loss. Counsel submitted that the landlords did not have sufficient insurance to cover the unit. Counsel submitted that the tenants are seeking brand new replacement cost for a seven year old carpet. Counsel submitted that the tenants were unable to quantify the exact cost of the carpet. Counsel submitted that the items removed from the unit were in fact the landlords and not the tenants and the tenant should not be responsible for that cost.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlords have failed to satisfy me of all four grounds listed above as is required. I agree with counsel that this is an unfortunate incident that caused both parties some financial hardship however, the landlords attempting to lay blame on the tenant is misplaced. The landlord was not able to provide any evidence to satisfy grounds #2 as listed above; nor did they provide sufficient evidence that the items removed from the unit were the tenants. In addition, the landlords stated that they had conducted condition inspection reports at the beginning of the tenancy and had fully renovated the unit; however they did not submit any receipts of those renovations or the condition inspection report. Based on all of the above and on the balance of probabilities I must dismiss the landlords' application.

### Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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: February 12, 2014

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Residential Tenancy Branch

