



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

Both parties attended and the tenant agreed he received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenant owes utilities and did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 6, 2012, a security deposit of \$650 and a pet damage deposit of \$325 were paid and rent was \$1300 a month plus utilities, including the city utilities. After discussing the utility bill, the parties agreed the tenant was responsible for \$360.82 of it; there was an error in the original calculation.

The landlord also claimed \$225 for repairs and painting of the repairs, \$360 for carpet cleaning and an amount for general cleaning. He said in the hearing that he paid the new tenant \$100 to do the general cleaning. The tenant claimed the repairs were needed when he first moved in, although he did not advise the landlord of the problems

at the time. He notes that they cleaned adequately when they left and he disagrees that the carpets were cleaned by the landlord. He enclosed emails sent to the landlord at the start of the tenancy complaining about the urine like smell of the carpets. He also provided statements from witnesses concerning stains and smell on the carpets. The landlord points to the move-in report as evidence that no problems were noted with the carpets at move-in and said the smell may have been from newly cleaned, damp carpets at the time. The tenant sent a letter on November 5, 2012 noting the smell had mostly disappeared and saying it may have been because of the dampness of them originally. The landlord provided his estimate of the cost of carpet cleaning based on an email of a company stating a cost per sq. foot. No firm estimate is provided although the company offered to do one onsite and no invoice is provided.

The landlord also claims \$250 for yard repair, that is to replace 200 sq.ft. with turf and to repair a landscape border including decorative rock and to clean out the flower beds. The tenant said he agrees he was responsible for yard maintenance but said that he could not mow the lawn because of excessive rain in October when he was vacating and he said he could have weeded a little better. However, he notes the problem with the grass is caused by large fir tree that shed their needles on it. He provided a letter from a neighbour to say he maintained the yard well and noting the problems with the trees. He said that the kiddie pool did cause a dry spot of about 80 sq. ft. but he saw that the grass was filling in again there. Photographs and other documents were provided as evidence.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Order:

The onus of proof is on the landlord to prove that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage. I find the landlord is entitled to recover \$360.82 in unpaid utilities as both parties agreed this is the amount outstanding.

In respect to the claim of \$225 for repairs, I find the weight of the evidence is that the tenant caused some damage such as a towel bar pulled off the wall, torn drywall, a gouged living room wall and damage to a stair handrail. Although the tenant contended that these damages existed at move-in, I find the condition inspection report does not indicate this although other details are noted such as scratches in the entry. I find this was a necessary repair beyond reasonable wear and tear so I find the landlord entitled to recover \$225 for repairs. Although the tenant contended the home was clean when

they left, I prefer the evidence of the move-out report which was done by a third party and notes that many items were dirty. One of the letters from a friend of the tenant noted that the refrigerator needed to be cleaned and during the inspection, the new tenants were already moving in. I find the landlord entitled to recover \$100 for the amount paid to the new tenant to clean. I find the pet is likely responsible for some of the costs and it is appropriate to apply both security deposits to any outstanding costs.

In respect to the landlord's claim of \$360 for carpet cleaning, I find insufficient evidence to support his claim. One of the elements of proving a damage claim is proving the cost to cure the damage. The landlord provided no invoice or actual on-site estimate of the cost but only a calculation he made himself based on an email query. I note also that there were significant complaints from the tenants at move-in of the smell of the carpet and at move-out, the agent wrote on her report that the living room carpet had been cleaned, although there are some stains. A letter from a witness at move-out also noted the carpets were cleaned and the new tenants were moving in while the final inspection was being done. Furthermore, the landlord noted that the cost of \$360 was based on 6 rooms and the condition inspection report does not note stained carpet or other carpet problems in any rooms except the living room and a bedroom. I find the landlord did not prove on a balance of probabilities he provided professional carpet cleaning and the cost of such cleaning.

The landlord also claimed \$250 for yard work which according to the email quote was to replace 200 sq. ft. of turf and repair a landscaped border including decorative rock and to clean out the flower beds. I find insufficient evidence to support the total of this claim. I prefer the evidence of the tenant that he kept the yard in reasonable shape although he could not mow it at the end and may not have weeded to the landlord's standard. I find the tenant's evidence more credible as it is supported by a neighbour's letter and by the move out report which notes only that the yard needs mowing and weeding. The neighbour's letter noted these tenants kept the yard in good shape, although prior tenants had not. I find the weight of the evidence is that the tenant owes the landlord a portion of his claim for a final mowing and some weeding. I find it equally probable that the turf replacement is necessitated by the tree needles and caused by an action of the tenant. I find it reasonable to allow the landlord \$100 of this claim.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain a portion of the security and pet damage deposits to offset the amount owing and to recover filing fees paid for this application.

## Calculation of Monetary Award:

Utilities owed as agreed	360.82
Repairs	225.00
Cleaning	100.00
Yard work allowance	100.00
Filing fee	50.00
Less security and pet damage deposits (no interest 2012-13)	-975.00
<b>Total Monetary Order is Credit owed to tenant</b>	<b>-139.18</b>

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 25, 2014

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Residential Tenancy Branch

