



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. The hearing was held over 2 days with both parties in attendance. At the time of the original hearing, November 14, 2013, the landlord asked that the tenants disclose all professional carpet treatments performed at the unit by the Citrus-O. The hearing was adjourned to permit the tenants opportunity to request and provide this information to the landlord.

The hearing was reconvened on January 14, 2014.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The parties agreed that the tenancy began on March 15, 2012 and ended on July 28, 2013. They further agreed that at the outset of the tenancy, the tenants paid a \$975.00 security deposit and a \$975.00 pet deposit and that they kept 2 dogs in the rental unit during their tenancy. They further agreed that they conducted an inspection of the rental unit at the end of the tenancy, but could not agree on whether the tenants were responsible for damage and the tenants left the unit without signing the condition inspection report.

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

**Carpet replacement and disposal costs.** The landlord seeks to recover \$4,413.60 as the cost of replacing carpet and underlay and an additional \$20.00 as the cost of disposing of the old carpet and underlay. The landlord testified that the tenant's dogs

urinated on the carpet throughout the rental unit, creating odours which could not be removed.

The landlord testified that on the date of the move out condition inspection, the carpet had just been shampooed and were still damp, but as they dried, the odour of dog urine became pronounced. The landlord stated that he shampooed the carpet with his own carpet cleaner and added a pet stain deodorizer, but was unable to eliminate the odour. The landlord pulled up the carpet on the bottom landing of the stairwell and discovered multiple urine stains. He provided a photograph of the underside of the carpet which shows significant staining. The landlord removed the carpet on the landing and then painted the landing with an odour blocking primer. He said that he expected this to resolve the odour problem, but new tenants moved into the unit and complained about odours throughout the unit.

The landlord testified that he conducted a more extensive investigation and found that there were stains throughout the carpet on the upper floor, most stains concentrated in the hallway and upper landing outside the master bedroom with fewer stains in a small area that held a desk during the tenancy. The master bedroom carpet also contained a significant number of urine stains and the carpet in the walk in closet was also stained. The carpet in the second bedroom had at least one urine stain and the carpet in the third bedroom had several urine stains. The landlord provided photographs of the underside of the carpet in all the affected areas.

The landlord testified that he removed the carpet on the upper floor and painted the floor with 2 coats of odour blocking primer, after which he hired a professional to replace the carpet. The landlord provided evidence that he spent \$4,413.60 replacing the carpet and underlay. This cost included installation. He also provided evidence showing that he spent \$20.00 disposing of the damaged carpet and underlay at the transfer station.

The tenants argued that there was no conclusive proof that the damage was caused by their pets. They acknowledged that they had a dog which urinated on the lower landing of the stairs, but insisted that she restricted her urination to that single area. The tenants claimed that the previous occupants of the unit had cats in the unit and that prior to that, a dog had been in the unit. They attributed the stains and odour to the pets previously in the unit. Although they had not detected a urine odour in the home during their tenancy, the tenants stated that this could be attributed to not being as sensitive to odours as the new occupants of the unit and the fact that the new occupants had children and therefore more time was spent near the floor, allowing them to detect odours.

The tenants testified that prior to moving into the unit, their dogs had not urinated inside their home. They testified that they had some behavioural issues with the dog in question and hired a dog behaviourist to address those problematic behaviours, which included barking and urinating in the house. The behaviourist provided a written statement in which she stated that the tenants showed her the landing on the stairs and said that the dog was urinating in that area. The behaviourist determined that the dog was engaging in marking behaviour and attributed the behaviour to the fact that other pets which had previously resided in the unit had marked on the landing and thereby excited the dog's instinct to cover that marking with her own.

Although they acknowledged that their dog had urinated on the landing, the tenants testified that they were diligent in cleaning the landing and insisted that neither of their pets had urinated elsewhere in the rental unit. In response to the landlord's photographs, the tenants stated that the stains showed different colours and degrees of intensity which suggested that they did not come at the same point in time or from the same animal.

The tenants argued that they were given no opportunity to negotiate with the landlord about the carpet issue and were also given no opportunity to inspect the carpet when the landlord discovered odour and staining after they had vacated the unit. The tenants also argued that on the landing and the second and third bedrooms, the furniture was placed in such a way as to prevent their dog from urinating in the areas shown to be stained.

The tenants further argued that the landlord enjoyed a betterment of the carpet by replacing the carpet with one of higher quality.

The landlord denied that the new carpet was of better quality.

The landlord bears the burden of proving his claim on the balance of probabilities. In other words, he must prove that it is more likely than not that the tenants caused the damage in question. For this claim, I find it likely that the tenants' dog caused much of the damage in question. While other pets had resided in the rental unit prior to this tenancy, neither the landlord nor the tenants noticed any staining or odour coming from the carpet and I find it unlikely that this would have been overlooked had the odour been as severe as both the landlord and the new occupants claimed that it was. This suggests to me that the tenants' dog caused most of the urine damage.

I am not persuaded that the stained areas on the upper floor were completely covered by furniture. I find it more likely than not that the dog urinated near the edge of the furniture in place and that the stain seeped through the carpet, spreading as it did so.

Although the tenants claimed that their dog restricted her urination to the lower landing on the stairs and the letter from their expert witness echoes this opinion, I note that the expert was explicitly told by the tenants that the landing was the only area in which the dog had urinated and therefore she was not in a position to determine whether the dog's marking behaviour had affected other areas of the house.

While I have accepted that the tenants' dog caused much if not most of the damage in question, I accept that her urination was triggered by her instinctual desire to mark her territory, which suggests that there were previous stains in the carpet caused by other animals. I also find it likely that there were older stains in the carpet for which the tenants should not be held responsible.

The landlord cannot recover the replacement value of used carpet. Rather, he is entitled to be made whole, which means he is entitled to recover the diminished value of the carpet. No evidence was led as to the age of the damaged carpet. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of carpet as 10 years. In the absence of evidence to the contrary, I find that the carpet had already lived half its useful life by the time the tenancy began and that the award to the landlord must be reduced by half to account for its age. As I have found that some pet urine stains were already present, I find that the award must be reduced by a further 15% to show the amount of devaluation for which the tenants should not be held responsible as that damage was caused by other tenants.

I am not satisfied that the quality of the new carpet is so significantly better than that of the damaged carpet that it would constitute a betterment.

I find that the landlord is entitled to recover 35% of the cost of replacing the carpet and I award him \$1,544.76. I find that the tenants should bear the cost of disposing of the carpet and underlay and I award the landlord \$20.00 for a total entitlement of \$1,564.76 under this claim.

**Stain and odour removal costs.** The landlord seeks to recover \$222.49 in costs associated with removing stains and odours from the carpet and painting the floor with odour blocking primer. I find that the actions of the landlord in attempting to remove the stains and odours were necessary and reasonable. I find that the former tenants should be held responsible for 15% of that cost and that the current tenants are responsible for the remaining 85% of the cost. I award the landlord \$189.12.

**Laminate replacement cost (estimated).** The landlord seeks to recover \$4,429.22 as the estimated cost of replacing laminate flooring which he claims was damaged as a result of standing water having been left on the floor. The landlord provided

photographs of the laminate showing that the veneer was lifting along the edges at several points. He testified that the laminate was originally installed in July 2010 and that the landlord installed it himself. He stated that although he has some leftover pieces, he cannot not replace random boards as they are designed to be interlocked in a specific sequence so the grain is properly aligned.

The tenants denied that they had at any time allowed water to stand on the floor. The tenants claimed that the damage to the laminate could have been caused by distortion or force due to expansion or due to a moisture problem in the basement. The landlord argued that the damage could not have been caused by expansion as there was not consistent distortion along the line of the flooring, but rather pockets of distortion. He argued that there could not have been a moisture problem in the basement because the tenants had furniture and electronics in the basement, which suggests that there were not moisture issues.

I find the landlord's explanation of the cause for the damage to be more likely than that of the tenants. The laminate had successfully survived almost 2 years with no damage noted on the condition inspection report at the time the tenancy began and I find it unlikely that expansion would suddenly have occurred in the third year. I find that the tenants caused the damage to the laminate.

I find that the landlord is not entitled to the replacement cost of the laminate for 2 reasons. First, the landlord has not replaced the laminate and as new tenants are currently occupying the unit, it is clear that the flooring may still be used for its intended purpose. The loss to the landlord, then, is of the value of the flooring's aesthetics. Also, there is no evidence that the landlord had to accept a lower rent from the new tenants, which indicates to me that the flooring is still very serviceable and sufficiently attractive that it did not diminish the overall value of the rental unit.

I find that the overall life of the flooring is likely diminished by several years and I find that the landlord is entitled to a reduction in value due to the diminished aesthetic of the floor. I find that an award of \$250.00 will adequately compensate the landlord for these losses and I award him that sum.

**Entry rug replacement.** The landlord seeks to recover \$39.20 as the cost of replacing the area rug at the entryway of the rental unit which he claimed to have been damaged by urine. The landlord provided a picture of the underside of the carpet showing a number of urine stains. The tenants did not comment on this claim.

Following my finding that the tenants' dog urinated throughout the rental unit, I find it more likely than not that the entry rug carpet was also damaged by the tenants' dog and

I find that the landlord is entitled to recover part of the cost of replacing the rug. The landlord provided no estimate of the age of the area rug and in the absence of such evidence, I find that the rug still had half of its useful life remaining and that the landlord is entitled to recover one half of the replacement cost. Again, I find that the former tenants should be responsible for 15% of the loss, leaving the tenants liable for 35% of the loss I award the landlord \$13.72.

**Steel shelving replacement.** The landlord seeks to recover \$74.18 as the estimated cost of replacing steel shelving. The landlord testified that the shelving had been in the rental unit at the beginning of the tenancy and that it had been disassembled and left in pieces at the end of the tenancy. He provided a photograph of the shelving showing that he was able to partially reassemble it, but was unable to complete the unit because some of the pieces were bent. The tenants testified that the shelving was disassembled by their movers and that they offered to reassemble it, but the landlord declined their offer.

The tenants had a responsibility to leave the shelving in the same condition in which they received it at the beginning of the tenancy, less reasonable wear and tear and they further had an obligation to complete any repairs or reassembly at the time of their move out condition inspection. I find that the damage goes beyond what may be characterized as reasonable wear and tear and I find that the landlord is entitled to recover the diminished value of the shelving. In the absence of evidence as to the age of the shelving, I find that the shelving still had half of its useful life remaining and that the landlord is entitled to recover one half of the replacement cost. I award the landlord \$37.09.

**Labour.** The landlord seeks to recover \$1,875.00 which represents 62.5 hours of labour at an hourly rate of \$30.00 per hour. This labour is all in relation to the removal of the damaged carpet and installation of the new carpet as well as time to re-assemble the steel shelving. As the landlord established that the tenants were primarily partially responsible for the damage to the carpet, I find that he is entitled to recover all but 15% of the cost of labour. However, I find the hourly rate charged to be excessive as this is not skilled labour and it likely took the landlord and his assistant significantly longer to perform the work than it would a skilled professional. I find that an award of \$400.00 will adequately compensate the landlord for his labour and I award him that sum.

**Filing fee.** The landlord seeks to recover the \$100.00 filing fee paid to bring this application. As the landlord has been just partially successful, I find it appropriate to award just one half of the filing fee and I award him \$50.00.

Conclusion

The landlord has been successful as follows:

Carpet replacement and disposal	\$1,564.76
Stain and odour removal	\$ 189.12
Estimated laminate replacement	\$ 250.00
Entry rug replacement	\$ 13.72
Steel shelving replacement	\$ 37.09
Labour	\$ 400.00
Filing fee	\$ 50.00
Sub Total:	\$2,504.69
Less security and pet deposits	(\$1,950.00)
<b>Total:</b>	<b>\$ 554.69</b>

The landlord will retain the pet and security deposits in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$554.69. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 28, 2014

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Residential Tenancy Branch

