



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for compensation for damage and cleaning of the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

Initially the Landlord testified there was no security deposit paid by the Tenant. In fact, the Landlord and the Tenant had been to one previous hearing, which involved the Tenant's claim for return of double the security deposit.

The Landlord then clarified that he meant no security deposit had been paid for this tenancy, as the deposit had been paid on a previous rental unit and carried forward to this rental unit and tenancy.

For ease of reference the file number for the previous matter is on the front page of this decision. Therefore, the security deposit issue was dealt with at an earlier hearing.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began in or about December 2012. The Landlord testified that at the end of the tenancy the rent payable was \$1,400.00, due on the first day of the month. There was no written tenancy agreement; however, the Act recognizes oral tenancy agreements and there was no dispute between the parties that they had a tenancy or about the terms of the tenancy. The tenancy ended on or about April 1, 2013.

The Landlord did not perform incoming or outgoing condition inspection reports that complied with the requirements of the Act.

The Landlord claims the Tenant failed to pay a water bill of \$122.77. This was not an issue as the Tenant agreed she would pay this.

The Landlord claims the rental unit required painting after the Tenant moved out. He testified it was last painted in 2010, when he bought the house and renovated it.

The Landlord claims the Tenant left large nails in the walls and constructed a 2x4 TV stand and attached this to a wall. The Landlord further claims the Tenant smoked in the bathroom, as there was tar and nicotine stains on the ceiling.

For repairs to the walls and painting the Landlord claims \$353.19.

The Landlord claims \$781.53 for the replacement of the carpets and underpad, and for the labour to install these. The Landlord claimed the carpets were put in the rental unit in 2009.

The Landlord claims the carpets smelled of dog urine. The Landlord testified that about the end of February or in early March, before he left on a trip on March 3, 2013, he was in the rental unit and witnessed a dog belonging to the Tenant urinating on the carpet.

The Landlord testified that when the next renter moved in they requested the carpets be changed due to the odour of dog urine. In evidence the Landlord submitted a letter from the renter who moved in right after the Tenant moved out. This person writes that when she visited the house in April of 2013, she saw a dog urinating on the carpet. This person also writes that, "The damage deposit paid by the former tenant is not enough to cover the damage to this house."

The Landlord also claims for a floor vent grill cover, in the amount of \$16.75. The Landlord claims this was broken by the Tenant.

The Landlord claims for March 2013 rent in the amount of \$150.00. The Landlord claims the full amount of rent for March 2013 was not paid.

The Landlord testified that the Tenant had been a very good renter in the previous property they rented and that he was surprised by the lack of cleaning the Tenant did

before she moved out. He testified the rental unit wasn't clean as the Tenant did not vacuum the carpets, as she said she would.

In reply, the Tenant denied most of the Landlord's claims. The Tenant did agree she owed the Landlord for the water bill, although she explained she was not given a copy of the bill before she moved out and did not know what amount to pay. She agreed she owed the Landlord \$122.77 for the bill.

The Tenant testified that she had the permission of the Landlord to mount the wooden TV stand to the wall. The Tenant testified that when she walked through the rental unit with the new renter, the new renter told her and the Landlord to leave it there as they might use it.

She denied having left large nails holes in the wall, and testified these were there when she moved in.

The Tenant denied causing the stains in the bathroom and testified she did not smoke in the rental unit house. She testified these stains were already there when she moved in. The Tenant denied that there was fresh paint when she moved into the rental unit.

The Tenant also testified that the Landlord had other renters in the rental unit before she moved in and they had pets.

As for the carpets, the Tenant testified that when she moved into the rental unit the carpets had not been cleaned. The Tenant testified she cleaned the carpets herself several times. In evidence the Tenant provided a receipt for a Bissel carpet cleaner, dated March of 2013. The Tenant testified this was a steam cleaner and she cleaned the carpets using this vacuum several times.

The Tenant testified that the Landlord told her that new carpets were being installed at the request of the new renter, as the new renter wanted to breed cats. The Tenant testified that the Landlord told her not to clean the carpets as these were being replaced.

The Tenant further testified that in an earlier discussion with the Landlord she informed him of a pull in the carpet caused by her vacuuming. She testified that the Landlord told her at that time not to worry about the pull, as he was going to replace the carpets anyway.

The Tenant testified that the vent in the floor was broken before she moved in. She testified it was never screwed into the floor.

As for the March rent, the Tenant testified that the Landlord agreed she could deduct \$150.00 from the rent for a three month period when the hot water tank had leaked. The Tenant explained she had complained to the Landlord of the hot water tank leaking

and of an unusually large heating bill over two months. The Tenant testified that the Landlord had allowed her to deduct \$150.00 from one month of rent for this.

In his concluding remarks, the Landlord explained that there had been 2 renters live in the rental unit before the Tenant and they had a cat which used a litter box. He testified he had to replace the carpet because he agreed to do this for his new renter.

The Landlord denied allowing the Tenant to nail the TV stand to the wall. He agreed there was a small leak in the hot water tank but he had lived there for ten years with the drip and it was a minor leak that was caught in a bucket.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided for in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant agreed to pay the Landlord **\$122.77** for an unpaid water bill and I award this amount to the Landlord.

I dismiss all of the other claims of the Landlord without leave to reapply, as I find the Landlord had insufficient evidence to prove the Tenant breached the Act or tenancy agreement.

I also found that often the evidence of the Landlord was contradictory and accordingly it was given little weight. For example, at the outset of the hearing the Landlord denied a security deposit had been paid, despite there being a previous hearing dealing with it. Another example was the Landlord being certain he witnessed a dog urinating in the rental unit before he left on a trip on March 3, 2013; however, the written evidence from his current renter was that she witnessed this in April of 2013. Over and above the inherently contradictory statements, it appeared to me that there was very little to substantiate this story in any event. In comparison, I found the evidence of the Tenant to be straightforward and compelling. For these reasons I accept the testimony of the Tenant that the Landlord informed her he was going to replace the carpets for the next renter. I also note that it appeared the Landlord simply brought this carpet claim forward after he had lost the previous hearing regarding the security deposit.

Furthermore, without any substantive evidence that recorded the condition of the rental unit at the start of the tenancy, such as an incoming condition inspection report, the Landlord has failed to prove the problems with the nail holes, wall or ceiling stains, or air vent were caused by the Tenant.

For these reasons, I find the Landlord had insufficient evidence to prove the claims alleged against the Tenant.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$142.77** comprised of the water bill owed by the Tenant and \$20.00 towards the fee paid for this application. I have reduced the amount awarded to the Landlord for the filing fee for the Application due to his limited success.

I grant the Landlord an order under section 67 for the balance due of **\$142.77**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. I note the parties are at liberty to offset the monetary awards each have obtained through Dispute Resolution.

Conclusion

The Tenant agreed she owed the Landlord for a water bill, and this amount has been awarded to the Landlord.

The other claims of the Landlord have been dismissed due to insufficient evidence from the Landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 11, 2014

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Residential Tenancy Branch

