



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on April 1, 2013 and ended on August 31, 2013. Rent of \$720.00 was payable monthly and at the onset of the tenancy the Landlord collected \$360.00 as a security deposit.

The Landlord states that the Tenant failed to clean the unit and claims \$180.00. The Landlord provided photos as evidence and states that the photos also include photos of other units. The Landlord identified the individual photos among the mix that belong to the Tenant’s unit as photos #168-173 and 176-178.

The Tenant states that the unit was cleaned thoroughly including under the appliances and that the appliance photos identified by the Landlord as being in the unit do not provide any context to determine that the appliances were in the Tenant's unit. The Tenant states that none of the photos are recognized as being of the unit. The Tenant provided photos of the unit stated to be taken after the unit was cleaned at move-out.

The Landlord states that the Tenant only steam cleaned the carpet with a cleaner rented from Safeway and that the Tenant damaged the carpet by cigarette burns. The Landlord states that the carpet had to be removed and replaced with new carpet. The Landlord states that the company that did the work supplied the carpet and that the Landlord does not know the cost of the carpet. The invoice for the costs claimed does not indicate the costs for the carpet and the costs for the labour but the Landlord estimates that the carpet would have cost around \$450.00 out of the \$600.00 claimed. The Landlord states that the invoicing company completes work on all the units and that they likely had carpet on hand.

The Tenant denies leaving any burn marks, states that he does not smoke and that any guests that smoked did so on the balcony. The Tenant states that during the tenancy the Tenant and the Landlord had an incident after the Landlord threw water at the Tenant while the Tenant was on the unit balcony. The Tenant states that he offers this evidence as evidence of the character of the Landlord and that the Landlord may be bitter towards the Tenant as a result of the incident.

The Landlord provided copies of a move-in and move-out inspection indicating the Tenant's signatures and the words "not" circled in the areas of the Tenant's agreement to damages and consent to deductions. The Tenant states that he did not see any inspection report at the onset and outset of the tenancy, that the Parties did not conduct any move-in and move-out inspections and that he did not sign any condition report at the onset of the tenancy. The Tenant states that he only signed a form at the end of the tenancy where he left his forwarding address. The Tenant states that the notes for each inspection are marked with the same pen.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the notations on the inspection reports, I find that the Tenant did not agree to the move-out report or deductions at the end of the tenancy. Further, given the Tenant's photo's that I find indicate reasonable cleanliness and no damages and considering the Tenant's evidence that the unit was cleaned and undamaged, I find on a balance of probabilities that the Landlord has failed to substantiate that the Tenant did not comply with the Act, regulation or tenancy agreement and I therefore dismiss the Landlord's application. I order the Landlord to return the Tenant's security deposit of \$360.00 forthwith.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$360.00**. If necessary, this order may be filed in the Small Claims 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: May 7, 2014

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Residential Tenancy Branch

