



# 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 was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. As not all of this documentary evidence was available to the Arbitrator at the start of the hearing, the landlord was permitted to provide the evidence again after the hearing had concluded. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this month to month tenancy started on October 15, 2012. Rent for this unit was \$1,000.00 per month plus 50 percent of the city utilities. Rent was due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$500.00 on October 15, 2012. Both parties attended a move in and a move out inspection of the unit. The tenants vacated the rental unit on July 01, 2014 and provided the landlord with their forwarding address in writing on that date.

The landlord testified that the tenants left the living room and master bedroom carpets extremely stained and dirty. The living room carpet had a paint stain which appeared as if the tenants had attempted to clean it with some sort of acetone. The carpets smelt of pet urine. The bedroom carpet had red wine strains and staining from pet traffic. The tenants claimed to have cleaned the carpets but no receipt or

invoice was provided. The tenants did however provide an email from a carpet cleaner who has stated that the carpets were heavily soiled and stained. If the carpets were cleaned then this was not successful. The landlord testified that the tenants had permission to have one dog in the unit but brought in a second puppy without permission which exasperated the staining on the carpet.

The landlord refers to a copy of a text message from the female tenant and testified that the tenants did offer to replace the carpet but failed to do so. The landlord attempted to have the carpets cleaned again but the staining, and pet smells remained. The landlord testified that the carpets were only a year old at the start of the tenancy and was a good quality carpet which the landlord had fitted so it would last. The landlord testified that he has not yet had the carpet replaced as he cannot afford to do so at this time but has provided an estimate for a like for like carpet to an amount of \$2,678.63. The landlord acknowledges that the carpet was three years old at the end of the tenancy and refers to his photographic evidence showing the condition of the carpet after it had been cleaned twice.

The landlord testified that the tenants did not leave the rental unit reasonably clean at the end of the tenancy. The windows were not clean, the appliances were very dirty, the yard was full of dog feces contrary to the addendum to the tenancy agreement which states that the tenant is responsible to pick up dog feces; the kitchen cabinets were very greasy and the stove was not cleaned. The female tenant present at the inspection came back twice to clean areas of the unit but the unit was still unclean. The new tenant moving in sent an email to the landlord concerning the greasy kitchen cabinets and stove along with other unclean areas. The bathrooms were not cleaned and the kitchen walls and door were left greasy. The landlord, the landlord's wife and the new tenant all cleaned the unit to ensure it was suitable for the new tenant's occupation. The landlord seeks to recover \$300.00 from the tenants for the landlord's time and labour.

The landlord testified that the closet doors were missing. The landlord has not yet had these replaced but estimates it will cost approximately \$100.00 for new doors and hardware. The landlord testified that he has not had time to get an estimate for this work.

The landlord testified that the tenants failed to pay their share of the final city utility bill. The landlord testified that he had estimated the tenants' share of the bill to be \$100.00; however, the final bill was \$364.00. The tenants share is therefore \$182.00. The landlord agreed he has not provided a copy of this bill to the tenants.

The landlord seeks an Order to keep the tenants' security deposit in partial satisfaction of this claim. The landlord also seeks to recover the filing fee of \$50.00.

The tenant JM testified on behalf of both tenants. JM testified that the move in condition inspection report shows there were three spots on the living room and bedroom carpet when the tenants moved into the unit. This is a cream carpet and the spots looked like dirt or coffee stains. JM agreed that they did spill some paint on the living room carpet and did offer to replace it; however, they disagreed with the amount charged by the landlord as the invoice contains other charges for furniture reorganisation. JM testified he has a family member who could replace the carpets for a lessor amount. JM agreed the landlord could keep \$500.00 of the security deposit towards the cost of the living room carpet and the tenants would pay an additional \$500.00.

JM testified that the bedroom carpet was not left in a worse condition then it was in at the start of the tenancy. They did pay to have the carpets cleaned and although the email from their carpet cleaner states the carpets were heavily spoiled the bedroom carpet was in a reasonable condition. JM testified that they did not have the landlord's permission to get a puppy but the landlord was aware they had the puppy as the landlord watched it for the tenants one evening.

JM disputed the landlord's claim for cleaning. JM testified that he was not present at the move out inspection but referred to the inspection report and states that the report shows the unit to be clean and makes no mention of additional cleaning in the comment section. The landlord's wife did the inspection with the female tenant and they both signed the report. There is also no mention of dog feces in the yard.

JM testified that the landlord gave them permission to remove the closet doors as they were an eyesore. The doors were left in the carport and as the landlord had contractors in doing a renovation in the basement, the contractors may have taken the doors away thinking they were garbage.

JM orally agreed at the hearing that the landlord is entitled to a Monetary Order for the tenants' share of the utilities of \$182.00. Had the landlord provided the tenants with a copy of the utility bill the tenants could have paid the bill. JM orally agreed the landlord may keep the security deposit of \$500.00 towards the living room carpet.

The landlord agreed to accept \$1,000.00 for the replacement costs of the living room carpet. The landlord disagreed with the tenant's testimony concerning the bedroom carpet and referred to the photographic evidence showing the permanent staining on the carpet and testified that the carpet cleaning could not remove these stains or the pet smell which has gone into the underlay.

The landlord disagreed with the tenant's testimony concerning the cleaning and dog feces. The landlord referred to the photographic evidence showing the unit in an unclean condition and an extensive amount of dog feces in the yard. The landlord testified that as he was not available when the tenants moved out

and his wife did the move out inspection but was not really aware how to complete the report so the cleaning was not documented accurately on the last page of the report.

The landlord disputed that he had given the tenants permission to remove the closet doors and testified that he never saw the doors in the carport.

The landlord testified that he had not provided a copy of the utility bill to the tenants as he found the tenants hard to deal with. The landlord agreed to send the tenants a copy of the utility bill mentioned in this claim.

#### Analysis

I have carefully considered all the relevant evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlord's evidence regarding the cleaning; the tenant argued that the move out inspection report does not indicate that the unit was left unclean at the end of the tenancy; however, I have reviewed the inspection reports and there are areas on that report that do indicate that the unit was not cleaned. Furthermore, the landlord has provided documentary evidence in the form of a letter from the new tenant in which the new tenant indicates that many areas of the unit were not clean when she took possession of the unit. There is also photographic evidence showing these areas were not clean.

From this evidence I am able to deduce that the rental unit was not left in a reasonable clean condition pursuant to s. 32 of the *Act*. Furthermore, although there was no mention of dog feces in the yard on the move out condition inspection report the landlord's photographic evidence shows that there was an extensive amount left in the yard which the landlord had to pick up. Consequently, I find the landlord has established a claim for cleaning to an amount of **\$300.00**.

With regard to the landlord's claim for replacement carpets; the tenant has agreed the landlord may retain the security deposit of **\$500.00** and has agreed the landlord may be compensated a further **\$500.00** for the staining to the living room carpet. The landlord has agreed to accept the amount of \$1,000.00 from the tenants for the damage to the living room carpet. Therefore, I will address the costs to replace the bedroom carpet. The landlord's photographic evidence shows the bedroom carpet had some stains remaining after it was cleaned, once by the tenants, and once by the landlord. As this carpet was three years old I find the landlord is entitled to some compensation from the tenants to replace the bedroom carpet; however, due to depreciation of the carpet over its life of three years I have deducted 30 percent from the landlord's monetary award. I have reviewed the carpet cleaning invoice and although this indicates a total charge of \$2,678.63 it does not show a breakdown of the square footage of carpet required for the master bedroom. As I have no clear evidence to show the size of the master bedroom in order to determine the square footage of carpet and the subsequent cost of that carpet I must limit the landlord's claim further. Consequently, it is my decision the landlord is entitled to recover the amount of **\$600.00** from the tenants for damage to the bedroom carpet.

With regard to the missing closet doors; the tenant testified that the landlord gave the tenants permission to remove the closet doors. The landlord disputed this. The tenant testified that the doors were left in the carport and could have been removed by the landlord's contractors. The landlord disputed this. Having considered the evidence before me I find the tenants have insufficient evidence to show that the landlord gave permission for them to remove the closet doors. Even if the landlord had given his permission the tenants remained responsible for the closet doors and should not have placed them in an area where they could have been damaged or removed by a third party. The landlord is required to provide evidence to show the actual cost for replacing the closet doors and has failed to do so. I therefore limit the landlord's claim to **\$50.00** to replace the closet doors and hardware.

With regard to the landlord's claim for the utility bill from the city. The parties agreed the tenants are responsible for 50 percent of the utility bill. The landlord has not provided the tenants with a copy of the final bill and a written demand for payment as required under the *Act*; however, the tenant JM agreed at the hearing that the landlord is entitled to recover \$182.00 for this utility bill and agreed the landlord may

be compensated for this in any monetary award issued at the hearing. I therefore find in favour of the landlord's claim to recover **\$182.00** for utilities.

As the landlord's claim has merit I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant.

As the tenant has agreed the landlord may keep the security deposit in full I am not required to make a decision on that matter.

A Monetary Order has been issue to the landlord for the following amount:

|   |                   |
|---|-------------------|
| Cleaning and removal of dog feces       | 300.00            |
| Living room carpet                      | \$1,000.00        |
| Bedroom carpet                          | \$600.00          |
| Closet doors                            | \$50.00           |
| Utility bill                            | \$182.00          |
| <b>Subtotal</b>                         | <b>\$2,132.00</b> |
| Plus filing fee                         | \$50.00           |
| Less security deposit                   | \$500.00          |
| <b>Total amount due to the landlord</b> | <b>\$1,682.00</b> |

### Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,682.00**. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order is enforceable through the Provincial Court 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: January 12, 2015

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Residential Tenancy Branch

