



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wanke Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: MND, FF  
                             Tenants: MNSD, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for carpet cleaning; carpet replacement; registered mailing costs and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order return of their security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenants submitted into evidence a copy of a 3 pages of a tenancy agreement recording the tenancy began on August 16, 2013 as a 1 year and 16 day fixed term tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid. The tenancy ended on August 30, 2014.

The tenants testified that they moved out of the rental unit on August 27, 2015 and returned the keys and provided their forwarding address to the landlord's office on that same date.

The landlord submitted that they attempted to set up the move out inspection with the tenants for August 30, 2014 and that additional dates were offered to the tenants including August 29, 2014 and August 31, 2014. The landlord confirmed that a written notice of final opportunity to schedule a move out inspection was not provided to the

tenants. The tenants did not attend the move out inspection. The tenants submit that when they moved out of the community the rental unit was in and they could not return for the inspection.

The landlord has withheld the security deposit and because the tenants did not attend the hearing the landlord determined the tenants extinguished the right to claim for the return of the security deposit and have not submitted an Application for Dispute Resolution to claim the deposit.

Both parties have submitted a copy of the Condition Inspection Report that records the condition of the rental unit at the start of the tenancy and at the end of the tenancy. The tenants confirmed in their testimony that the stains in the bedroom carpet were not there at the start of the tenancy but they do not know how the stains got there during the tenancy. The tenants submit they did not even notice the stains until their furniture was removed towards the end of the tenancy.

The landlord seeks compensation for cleaning the carpets and then for the value of replacing the carpets as the stains could not be removed. The landlord has submitted an invoice for carpet cleaning confirming a cost of \$131.25. The landlord has also submitted an estimate for carpet replacement and installation in the amount of \$784.22. The landlord testified the carpet was originally installed in 2008.

The tenants have submitted a quote of their own for carpet replacement in the amount of \$342.45. The landlord submits that this quote does not include removal of the old carpet or installation of the new carpet.

### Analysis

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the Regulation and the tenant has not participated in the inspection.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the *Act* and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

I find the landlord has failed to comply with the requirements of Section 35 of the *Act* and Section 17 of the Regulation because, from the landlord's own testimony, they did not provide a written notice in the form prescribed. As such, I find the landlord has extinguished their right to claim against the deposit and must have returned the deposit to the tenants within 15 days of the end of the tenancy and receipt of the tenant's forwarding address as is required under Section 38(1) of the *Act*.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit or \$1,000.00.

In the case before me and from the tenant's undisputed testimony that they provided their forwarding address to the landlord and possession of the rental unit to the landlord on August 27, 2015 I find the landlord was required to return the tenant's deposit no later than September 13, 2015. As the landlord has failed to do so and therefore failed to comply with Section 38(1) I find the tenants are entitled to double the amount of the security deposit pursuant to Section 38(6).

In relation to the landlord's claim I am satisfied that the stains to the carpet in the bedroom were caused during the tenancy and in the absence of any evidence to the contrary I find the tenants are responsible for the costs of cleaning and replacement as support by the landlord's invoice and estimates subject only useful life of building products depreciated value as found in Residential Tenancy Policy Guideline #40.

The Guideline shows that the useful life of carpeting is 10 years. As the landlord testified the carpets were installed in 2008 I accept that the carpets were 6 years old at the end of the tenancy and the value of the landlord's claim for carpet replacement must be depreciated by 60% or to \$313.69.

In regard to the landlord's claim for registered mail costs associated with the pursuit of this claim I note that the *Act* does not allow for the reimbursement of such claims. I dismiss this portion of the landlord's claim.

Based on the above, I find the landlord is entitled to the costs for carpet cleaning (\$131.25) and carpet replacement (depreciated) (313.69) or a total of \$444.94.

As both parties were successful in their claims I find that each is entitled to recover the file fee from the other party. As such, the assignment of these amounts will cancel each other out and render this part of each of their claims as moot.

### Conclusion

I find the tenants is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$555.06** comprised of \$1,000.00 double the security deposit less \$444.94 for carpet cleaning and replacement.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: April 16, 2015

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Residential Tenancy Branch

