



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALBERNI TOWERS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Notice of Hearing and their Application on October 20, 2014 by registered mail to the address provided by the Tenant. The Tenant provided this address to the Landlord by text message; a copy of the text message was introduced in evidence. The Landlord testified that the registered mail was returned to the Landlord on November 10, 2014 as unclaimed. A tenant cannot avoid service by refusing registered mail. Under section 30 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 25, 2014.

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.

### Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence. This tenancy began August 1, 2014 for a one year fixed term ending on July 31, 2014. The monthly rent was

\$850.00 per month and the Tenant paid a security deposit in the amount of \$425.00. The Landlord testified that the Tenant moved out in the “middle of the night” on September 21, 2014.

Introduced in evidence were copies of texts between the Landlord and the Tenant wherein the Landlord attempted to arrange for a move out condition inspection. The Landlord testified that the Tenant failed to attend any of the proposed times for the inspection.

The Landlord testified that the Tenant caused a flood in her rental unit which caused significant damage, primarily to the floors and that the required repairs prevented the renting of the rental unit until February 15, 2015. Introduced in evidence was a photo of the laminate flooring which was damaged by the floor.

Although the Landlord claimed to have suffered rental losses of five and a half months, the Application for Dispute Resolution indicated they only sought the sum of \$850.00 in liquidated damages, which is specifically provided for in paragraph 5 of the residential tenancy agreement.

The Landlord testified that the Tenant failed to have the carpets professionally cleaned as required by the tenancy agreement and the *Act*, and as such the Landlord incurred the cost of \$157.50 for carpet cleaning. The Landlord failed to provide the receipt in evidence.

The Landlord also testified that they paid a repair bill for the damage to the rental unit, which included labour only, and which was for \$1,435.17. Again, the Landlord failed to provide this receipt in evidence.

The Landlord also sought \$40.00 in cleaning costs. The manager, J.L., testified that he personally did the cleaning which required two hours of his time. He further testified that the two hours were paid to him in addition to his regular pay, and that he was paid \$20.00 per hour for a total of \$40.00.

J.L. further testified that as the Tenant failed to return her keys, the Landlord incurred a \$30.00 cost for their replacement.

In summary, the Landlord claims as follows:

Liquidated damages	\$850.00
Cleaning costs	\$40.00
Key replacement	\$30.00
Carpet cleaning	\$157.50
Damage repair bill	\$1,435.17
Filing fee	\$50.00
<b>Total claimed</b>	<b>\$2,562.67</b>

The Tenant did not file any evidence, nor did she attend the hearing to dispute the Landlord's claims.

### 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 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 Landlords 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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

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

The evidence indicates that the carpets were not steam cleaned when the Tenant left, as required under the *Act* and the tenancy agreement. I further find the Tenant did not clean the unit, or make necessary repairs and this has caused losses to the Landlord.

Although the Landlord failed to introduce evidence of the receipts for the amounts claimed, I accept the undisputed testimony of the manager, J.L., and the senior property manager, T.D., as to the amounts claimed. I further find these amounts to be reasonable.

Therefore, I allow the Landlord the full amount claimed, namely **\$2,562.67** for the following:

Liquidated damages	\$850.00
Cleaning costs	\$40.00
Key replacement	\$30.00
Carpet cleaning	\$157.50

Damage repair bill	\$1,435.17
Filing fee	\$50.00
<b>Total allowed</b>	<b>\$2,562.67</b>

I order, pursuant to section 38 of the *Act* that the Landlord retain the deposit and interest of **\$425.00** in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$2,137.67**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

#### Conclusion

The Landlord is granted a Monetary Order for the amounts claimed. The Landlord may retain the security deposit and is granted \$2,137.67 for the balance due.

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: May 22, 2015

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Residential Tenancy Branch

