



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TERMINAL HEIGHTS APT. LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1343 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agent. Two employees of the landlord observed the hearing for training purposes.

The agent testified that the landlord served the tenant with the dispute resolution package on 6 March 2015 by registered mail. The agent testified that this mailing was sent to the forwarding address provided by the tenant to the landlord. The agent provided me with a Canada Post tracking number that showed the same. The agent testified that the mailing was returned to the landlord.

*Residential Tenancy Policy Guideline*, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenant was deemed served with the dispute resolution package on 11 May 2015, the fifth day after its mailing.

#### Preliminary Issue – Amendment to Landlord's Application

At the hearing the agent advised me that the tenant vacated the rental unit on 2 March 2015. The agent asked to withdraw the landlord's request for an order of possession. As there is no prejudice to the tenant, I allowed the amendment.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 December 2012 and ended 2 March 2015. Monthly rent of \$695.00 was payable on the first. At the beginning of the tenancy, the landlord collected security and pet damage deposits totaling \$695.00 (the deposits).

The agent conducted condition move-in and move-out inspections with the tenant. Reports were created for both. The tenant refused to sign the condition move out inspection. The condition move out inspection notes that the carpets in the living room and bedroom were dirty.

On 2 March 2015, the tenant wrote to the landlord to demand return of her deposits. In that letter the tenant admits that there were pet stains on the carpet.

The agent testified that the tenant had three or four kittens in the rental unit. The agent testified that the carpet in the rental unit was saturated with cat urine. The agent testified that the carpet sales person informed him that the carpet could not be restored and that it would have to be replaced. The landlord provided me with a quote from the

carpet sales person in the amount of \$1,306.31. The agent testified that the actual cost to replace the carpets was this amount.

The landlord testified that the carpet was approximately 2.5 years old when it was replaced.

### Analysis

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. On the basis of the agent's sworn and uncontested testimony as well as the tenant's admission that there were pet stains on the carpeting, I find that the tenant's actions or neglect caused damage to the carpets. The tenant caused this damage by failing to ensure her pets did not damage the rental unit.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The agent provided sworn and uncontested testimony that it was necessary to replace the carpet and that it could not just be cleaned. I accept the landlord's evidence and find that it was necessary to replace the carpet. I accept the landlord's evidence that the carpets cost \$1,306.31 to replace.

*Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of carpet is ten years. The agent testified that the carpet was 2.5 years old. As such, the capital value of the carpet had depreciated by 25%. On this basis, I find that the landlord is entitled to recover 75% of the cost of the carpet replacement.

The landlord applied to keep the tenant's deposits. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in its application, it is entitled to recover the filing fee from the tenant.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$334.73 under the following terms:

Item	Amount
Recovery of Carpet Cost (75%)	\$979.73
Offset Security Deposit Amount	-695.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$334.73</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: July 10, 2015

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Residential Tenancy Branch

