



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Porte Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlords and one of the named respondents.

The landlord provided documentary evidence to confirm that each named respondent was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 3, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

The landlord also provided documentary evidence to confirm that their subsequent amendments to their Application and evidence was also served to both named respondents by registered mail.

Based on the testimony and evidence of the landlord, I find that each named respondent has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing both parties provided testimony regarding the tenancy that has raised the issue of who should be held responsible for the landlord's claim. The parties agreed the tenancy began with a signed tenancy agreement between the landlord and the male tenant named as one of the respondents. The parties also agree that while the male tenant's daughter (female tenant named as one of the respondents) lived with him at the time she was not named as a tenant on the tenancy agreement.

The male respondent confirmed in his testimony that he moved out of the rental unit in February 2010 but that his daughter stayed in the rental unit from that time until the tenancy ended in November 2014.

The landlord testified that the female named respondent paid rent directly to the landlord by direct deposit and that rent increases issued since February 2011 have named the female respondent as the tenant.

Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Based on the above, I find the tenancy that included the male named respondent concluded when he vacated the rental unit in February 2010. I also find the testimony of both parties confirms that the female named respondent and the landlord entered into an oral agreement respecting the possession of the rental unit when she began to pay rent directly to the landlord and the landlord accepted that rent.

As such, I find the male named respondent is not a party to the tenancy for which the landlord seeks compensation and I amend the landlord's Application to exclude the male named respondent. I note any orders issued as a result of this decision will name only the female named respondent (tenant).

As I have determined that both parties had been sufficiently served with notice of this hearing and the tenant's father attended the hearing on behalf of both named respondents with full knowledge of the details of this dispute, I find the tenant was sufficiently represented at this hearing by her father as her agent. I have considered the testimony of the agent in this decision.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Act*.

#### Background and Evidence

The original tenancy began with the tenant's father in August 2005 as a 7 month fixed term tenancy for the monthly rent of \$910.00 due on the 1<sup>st</sup> of each month with a security deposit of \$455 paid. The original tenancy ended in February 2010.

The subsequent tenancy began in March 2010 between the tenant and the landlord under the same terms as the original agreement with rent increases that had been imposed during the original tenancy. This subsequent tenancy ended when the tenant vacated the rental unit on or before November 30, 2014.

The landlord's claim is as follows:

Description	Amount
Flooring – carpet/line removal and replacement	\$4,100.00
Painting – seal entire floor area with stain blocker	\$257.25
Repairs – removal and replacement of all drywall damaged by cat urine	\$426.30
Cleaning – including window coverings	\$125.00
<b>Total</b>	<b>\$4,908.55</b>

The landlord submits that as a result of the tenant's cat spraying and urinating throughout the rental unit it was left in a condition that required the landlord to complete substantial repairs, including repairs to drywall; structure; and carpets. The landlord submitted the carpets were 9 ½ years old at the end of the tenancy. The landlord testified that they believe that the carpet, had it not been for the damage caused by the cat, would have lasted through one more tenancy.

The landlord also submits that as a result of the tenants placing laminate flooring over other existing flooring additional damage was caused by the tenants. The landlord also submits the unit required cleaning including window covering cleaning.

The tenant's agent does not dispute that the cat in the rental unit during the tenancy did urinate and caused the damage claimed by the landlord. However, the agent submits that the landlord could have accomplished remediation by completing a bio-wash to rid the unit of any scent issues. The tenant suggests this would cost only a couple of hundred dollars.

The tenant's agent also submitted that during the time that he lived in the rental unit he had asked the landlord to replace the linoleum in the bathroom but the landlord refused. He states that the reason he had asked for it to be replaced was that it was already showing the damage the landlord is now claiming compensation for.

The landlord submits that as a result of the laying of laminate flooring over the existing linoleum the original floor is showing significant water damage and requires replacement.

As evidence the landlord has submitted into evidence a copy of a Condition Inspection Report; several photographs; and invoices and estimates for work either completed or required.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the evidence provided by the landlord and the testimony of both parties I find that significant damage was caused to the rental unit as a result of the tenant's cat that was not repairs prior to the end of the tenancy. I also find that the tenant is responsible for damage to the flooring in the bathroom resulting from the laying of laminate flooring. As such, I find the tenant has failed to comply with the requirements under Section 37.

As to the value of that loss I find the landlord has established that the replacement of flooring materials is \$4,100.00; the repairs and painting \$683.55; and cleaning \$125.00.

Policy Guideline #40 lists the useful life of carpeting to be 10 years and as such, it is suggested that the landlord's claim for replacement carpeting be discounted by, in this case, 95%. However, based on the landlord's photographs of the carpet I find that other than the damage caused by the cat the carpets appeared to be in relative good condition.

I therefore find that the deterioration of the carpets was accelerated by the damage inflicted by the tenant's cat. As a result, I accept this particular carpeting would not have had to have been replaced at the end of this tenancy. As such, I discount the landlord's claim only by 50%.

### Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,908.55** comprised of \$2,050.00 flooring; \$257.25 painting; \$426.30 repairs; \$125.00 cleaning and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: July 28, 2015

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Residential Tenancy Branch

