



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 7 and 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

The tenant did not attend. The landlord gave sworn testimony that they served the Application for Dispute Resolution by registered mail. It was verified online as successfully delivered. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenant damaged the property beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the latest tenancy agreement commenced February 1, 2014 and expired March 1, 2015; the tenant vacated on March 31, 2015. The landlord said the tenant had previous tenancies dating since 2012. Rent was \$2200 a month and a security deposit of \$1100 was paid in 2012. The landlord claims damages as follows:

\$2365 for wall repair and painting  
\$365 (x2) for replacing two damaged doors  
\$125 to install a new bathroom fan motor  
\$105 for caulking three vanity sinks  
GST \$148 on above  
\$1195 to replace two damaged bedroom carpets

The landlord said this was a unit in a building built in 2007 and the items claimed were in original condition when the tenants took possession in 2012. However, the tenant family had some serious issues which resulted in the wife moving out and she said the males in the unit did not clean it so the carpets actually changed colour from white to grey/black colours and were badly stained. A condition inspection report at move-in and move-out show the unit condition as good at move-in and at move-out noted damages as above. Photographs and invoices were also provided as evidence. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Order:

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.

Section 37 of the *Act* provides that when a tenant moves out, the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

I find in this case the weight of the evidence is that tenant violated the *Act* by leaving elements in the unit significantly damaged. Residential Tenancy Policy Guideline 40 (the Guideline) assigns a useful life to elements in rented premises which is designed to account for reasonable wear and tear. I find the elements in this unit were 8 years old when the tenant vacated (2015-2007- year built). I find the weight of the evidence is that the elements in the unit were damaged as claimed and the landlord's oral evidence is well supported by the move-out report and photographs.

I find the Guideline assigns a useful life of 4 years to paint; in reviewing the photographs and inspection report evidence, I find the cost is mainly for painting as the damage to the walls is mainly holes which are repaired in a normal paint job. Therefore I find the landlord not entitled to recover painting costs as the paint was 8 years old when the tenants vacated so was beyond its useful life. The Guideline assigns a useful life of 20 years to doors so I find the landlord entitled to recover \$438 for replacing two doors to

compensate for the 60% of useful life remaining in the doors (\$730x.6). Fan motors are assigned a useful life of 15 years so I find the landlord entitled to recover \$58.33 for the 46% of useful life remaining in the bathroom fan motor that had to be replaced. The landlord provided evidence that they had to recaulk three bathroom sinks which cost \$125; however, I find the Guideline assigns a useful life of only 5 years to such sealants so I find the landlord not entitled to recover costs of caulking that was beyond its useful life.

\$1195 was claimed for carpet replacement and the oral and documentary evidence supports the landlord's claim that these carpets had to be replaced due to significant damage and staining. The Guideline assigns a useful life of 10 years to carpets in rented premises so I find the landlord entitled to recover 20% of the cost of their replacement to compensate him for the 2 years of useful life remaining. I find him entitled to recover \$239 (1195x.2).

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain a portion of the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I find the tenant is entitled to the balance of the deposit and a monetary order is issued in their favour.

Calculation of Monetary Award:

Painting allowance	0
Bathroom door replacement allowance	438.00
Fan motor replacement allowance	58.33
Carpet replacement allowance	239.00
GST on above (735.33 x 5%)	36.76
Filing fee	50.00
Less security deposit(no interest 2012-15)	-1100.00
<b>Monetary Order as refund to Tenant</b>	<b>-277.91</b>

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: September 10, 2015

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Residential Tenancy Branch

