



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNSD, MNDC, FF, RR

### Introduction

This hearing dealt with applications from both the male landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The male landlord applied for:

- 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 and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant named both landlords in her application for:

- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a retroactive order to allow the tenant a monetary award for reduced rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to obtain a return of her deposits pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female landlord (the landlord) confirmed that on July 31, 2014, the landlords received the tenant's written notice to end her tenancy on the scheduled end date for her second fixed term tenancy, August 31, 2014. This notice was placed in the landlord's mailbox. The landlord also confirmed that the landlords received a copy of the tenant's dispute resolution hearing package and written evidence, left in the landlord's mailbox on March 25, 2015. The tenant confirmed that on June 22, 2015, she received a copy of the male landlord's dispute resolution hearing package sent by the landlords by registered mail on June 19, 2015. She also confirmed that she received all of the landlord's written evidence package. I find that the parties were both duly served with all of the above documents in accordance with sections 88 and 89 of the *Act*.

### Issues(s) to be Decided

Are either of the parties entitled to monetary awards for losses or damage arising out of this tenancy? Is the tenant entitled to a retroactive rent reduction resulting from her loss of services and facilities that she expected to receive as part of her tenancy agreements? Which of the

parties are entitled to the tenant's deposits? 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 submitted by the parties, including photographs, documents, reports and written estimates, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of these claims and my findings around each are set out below.

The tenant moved into the basement of the landlords' home on the basis of a six-month fixed term tenancy that was to cover the period from September 1, 2013 until February 28, 2014. Monthly rent was set at \$900.00, payable in advance on the first of each month, plus 1/3 of the hydro and gas charges for this property. The landlords live in the upper living unit in this home. The landlords continue to hold the tenant's \$450.00 security deposit and \$450.00 pet damage deposit, both paid on or about September 1, 2013. On March 13, 2014, the parties signed a new six-month fixed term Residential Tenancy Agreement, for the period from March 1, 2014 until August 31, 2014. The same rental terms and utility fees remained in place for this second Residential Tenancy Agreement. The landlords entered into written evidence copies of both of these Agreements.

The tenant's application for a monetary award of \$3,770.00, included the following:

<b>Item</b>	<b>Amount</b>
Retroactive Rent Reduction of \$250.00 per month for 12 months (12 x \$250.00 = \$3,000.00)	\$3,000.00
Return of Security and Pet Damage Deposits (2 x \$450.00)	900.00
Recovery of Cost of Purchasing a Heater	70.00
Less Estimated Utility Bill Outstanding at End of Tenancy	-100.00
Less Estimated Carpet Cleaning Costs	-100.00
<b>Total Monetary Order Requested</b>	<b>\$3,770.00</b>

The male landlord's application for a monetary award of \$2,060.00, included the following listed in his Monetary Order Worksheet entered into written evidence:

<b>Item</b>	<b>Amount</b>
Estimated Cost of Carpet Installation	\$1,603.58
Unpaid Gas and Hydro Utility Bills	141.61
Door Repair	236.82
Cost of Printing Photographs	27.99
Recovery of Filing Fee	50.00

<b>Total Monetary Order Requested</b>	<b>\$2,060.00</b>
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The tenant relied almost exclusively on a handwritten statement of March 24, 2015, her sole substantive written evidence she submitted regarding this hearing. In this document, she outlined the reasons why she believed she was entitled to a retroactive rent reduction of \$250.00 for each of the twelve months she resided in the rental unit. In her document, she maintained that the living conditions at the rental unit “were not great.” Her list of deficiencies in her tenancy included the following:

- She was asked to keep snow cleared from her door and along her stairs to the ground level. (On this point, she gave sworn testimony that it only snowed three times during the entire term of her tenancy, and the female landlord shovelled the snow for her on one of those occasions.)
- She had concerns about some mail that she received late.
- She was concerned about the landlord’s small dog, which barked when the landlords were not home.
- She had to install weather stripping at her own cost (\$40.00).
- There was an opening in her bedroom closet, which required her to purchase a small floor heater at a cost of \$30.00.
- There was insufficient water temperature in the shower and no heat in the bathroom.
- There was no heat in the second bedroom.
- The fireplace was “tempermental.”
- An opening by the entrance door allowed bugs to crawl into her basemen suite.
- The internet provided to her by the landlords did not work properly.
- Many of the halogen lights in the rental unit did not work.
- The security system in the rental unit was not operational.
- The ice maker in the refrigerator did not work properly.

The tenant testified that she asked the landlords to resolve these issues, but the landlords refused to address her concerns. She acknowledged that she had not submitted any written requests to the landlords about any of these issues.

At the hearing, the tenant offered little in the way of sworn testimony to support her claim. She said that she had been prepared to pay for damage caused by her pet. She said that the move-out condition inspection report showed that the rental suite was left in “A1” condition. She confirmed that the written move-in and move-out reports were accurate and were unaltered from the time she signed them. In the move-out report, she signed a statement that the report accurately reflected the condition of the rental unit. She said that it was not until later that the landlord advised her that he would be charging her for damage. The tenant also maintained that television and internet provided to her by the landlords as part of her monthly rent was not always working during her tenancy.

The female landlord testified that the tenant signed the joint move-out condition inspection report in which the parties noted the following:

*Damage to rental unit or residential property for which the tenant is responsible:*

*Carpet damaged by cat (throing up) stains – to be inspected by (carpet cleaning company) to determine if stain can be removed.*

(as in original but for anonymization of carpet cleaning company name)

The landlords entered into written evidence a statement from the carpet cleaning company indicating that the company “can not guarantee stains, spots and odor removal. Stain may be permanent and spots, odour may remain.” The female landlord testified that the carpet cleaning company attended the rental unit on September 2, 2014, to provide their assessment of the work involved and to provide a quote for carpet cleaning services. Since the carpet cleaning company would not guarantee that the stains would be removed, the landlords obtained a quote from a carpet company for the replacement of both the carpet and the underlay in the living room and hallway, the areas damaged by the tenant’s cat. The landlord estimated that these carpets were approximately one year old when this tenancy began. During the hearing, the landlords testified that they have not replaced these carpets, as they have been waiting to obtain a monetary award against the tenant in order for them to purchase the replacement carpeting. The male landlord said that the landlords could not re-rent the basement rental unit with the carpets in their current condition and have not attempted to do so. He noted that the landlords have not attempted to recover any loss of rent from the tenant.

The female landlord noted that neither tenancy agreement showed that television or internet were included in the tenant’s monthly rent. Although she said that the landlords made arrangements to allow the tenant access to both their wireless internet connection and to their television cable at no extra cost, she said that this was not included in the list of services that the landlords committed to provide to the tenant as part of their Residential Tenancy Agreements. She said that this was a courtesy the landlords extended to the tenant. She also testified that the landlords were at a loss to understand the tenant’s complaints about her access to mail delivery. Both landlords testified that the tenant had not raised many of the concerns identified in her written evidence with the landlords during the course of her tenancy.

The female landlord also noted that the tenant continued her tenancy after the expiration of the initial six-month fixed term tenancy. She questioned why the tenant chose to sign this second six-month fixed term if conditions were as unacceptable as the tenant outlined in her written evidence. The tenant responded that she felt that she had little choice but to continue her tenancy when she signed her second fixed term.

The male landlord testified that he lived in the tenant’s basement rental unit for a number of years and had no problems with a lack of hot water or heat. He gave undisputed sworn

testimony that a new furnace with a heat pump was installed about four years earlier and that the fireplace in the basement heats that entire rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The onus is on the parties submitting their claims to prove on the balance of probabilities that the other party caused the damage or losses for which they were responsible and, in the case of damage, that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

### Analysis – Landlord's Application

In considering the landlord's application, I have considered all of the written and photographic evidence submitted by the parties, as well as their sworn oral testimony. In particular, I have taken into consideration the signed joint move-in and move-out condition inspection reports, including the tenant's agreement that there had been carpet stain damage caused by her cat. I have also considered the photographs of the rental unit before this tenancy began and after it ended.

After reviewing these documents, I find that the landlords have established that there was damage to the hallway and living room carpets caused by the tenant's cat. These stains were evident in the photographs and the tenant clearly indicated on the signed joint move-out condition inspection report her acceptance of responsibility for this damage.

As I noted at the hearing, the landlords' failure to actually remove and replace the damaged carpet in the hallway and living room calls into question the extent to which the landlords have experienced actual losses arising out of this tenancy, as outlined in section 67 of the *Act*. There has been an acknowledgement by both parties that the carpets were stained. Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, there was a signed statement on the joint move-out report that the extent of this carpet damage was to be assessed and determined by the professional carpet cleaning company. Although the female landlord testified that the carpet cleaning company attended and inspected the rental unit on September 2, 2014, the tenant questioned whether this actually occurred. The landlords' written evidence reveals that the landlords did not proceed with the professional carpet cleaning. The landlords provided a copy of the cost estimate for this \$260.97 cleaning from the professional carpet cleaning company. In the "Details of the Dispute"

section of the landlords' original application dated September 15, 2014, the male landlord indicated that the landlord(s) "called C Carpet Cleaner and told they could not guarantee on removing stains & odours." In his letter to the RTB accompanying his current application for a monetary Order, he referred to the contact with the carpet cleaning company as follows:

*... Copy of C quote for Carpet Cleaning services that shows no guarantee of pet stains, spots and odour removal after cleaning,...*

The document entered into written evidence by the landlords regarding the carpet cleaning company noted that the original call was taken by that company on September 2, 2014, with an estimated cleaning date of September 9, 2014 after 4 p.m. The landlords did not request a monetary award to recover the \$260.97 identified on what appears to have been solely an estimate for the professional carpet cleaning. Based on the evidence before me, I find that the landlords decided that they would have to replace the carpets in the hallway and living room at an estimated cost of \$1,603.58, rather than incur the costs of professional carpet cleaning which was not guaranteed to remove either the carpet stains or the pet odour.

Under these circumstances, I find that the landlord has not met the requirements of section 7(2) of the *Act*, as the landlord has not taken adequate steps to minimize the tenant's exposure to losses arising out of her actions or, in this case, the actions of her cat. At the end of this tenancy, the tenant only committed to the first step of attempting to find out if professional carpet cleaning would be able to remove the pet stains and odour. The professional carpet cleaning company could not provide any guarantee that their cleaning would remove the stains and pet odour. Rather than seeing if the carpet cleaning would prove effective, the landlords chose to seek a total replacement of these carpets, at the tenant's expense, an expense that they have still not incurred over a year later. The landlords did not provide any recent photographs of the carpets in question. Given these circumstances, I find that the landlords have not incurred any actual expenses, either through carpet cleaning or through the replacement of these carpets, more than a year after this tenancy ended. Although the landlords have not attempted to re-rent the rental unit and claimed that this was because they could not re-rent it with stained carpets, there may be a range of reasons as to why they have chosen to not try to re-rent this basement suite.

I recognize from the photographs taken over a year ago and from the sworn evidence of the parties and the written evidence that there was damage to the carpets in the hallway and the living room that arose during the course of this tenancy. Even though no actual expenses appear to have been incurred by the landlords to date, I find that the landlords are entitled to a monetary award for the equivalent of the estimate of the \$260.97 carpet cleaning provided to them. I find that the tenant gave her written authorization to proceed to this step in assessing the extent to which the carpets could be cleaned. The landlords' failure to obtain this professional carpet cleaning does not negate the fact that damage to the carpets occurred during the course of this tenancy, damage which was identified and acknowledged in the joint move-out condition inspection report and photographs.

Had the landlord acted promptly on the professional cleaning of the carpets and then determined that carpet replacement were necessary, I would have been willing to consider at

least a partial claim for compensation for the replacement of this carpet, even if the landlords did not replace these carpets. However, I find that the landlords' inaction in obtaining professional carpet cleaning constituted neglect in attempting to minimize the tenant's exposure to the additional loss of replacing this carpet. At this point, it is difficult to determine whether or not professional carpet cleaning shortly after the end of this tenancy would or would not have been successful. Under these circumstances, I allow the landlords only a nominal amount of \$200.00 for the damage caused to the carpet in addition to the award of \$260.97 for professional cleaning that may have been successful had they obtained this cleaning shortly after the end of this tenancy. I issue this monetary award on the basis of the photographic evidence and the landlords' undisputed sworn testimony, which has convinced me that the stains in question may very well have been difficult to eliminate even with professional carpet cleaning.

In her written evidence and at the hearing, the tenant did not dispute the landlords' claim that the tenant ended her tenancy without attending to her 1/3 portion of outstanding gas and hydro bills. The landlord entered into written evidence copies of these bills, the tenant's portion of which totalled \$141.61. Based on the landlords' detailed calculations and the tenant's admission of responsibility for these bills, I issue a monetary award in the landlord's favour in the amount of \$141.61 for this item.

There was no reference in the joint move-out condition report to damage to a bedroom door in this rental unit and no receipt for repairs to this door. Although the landlords' photographs show some marks on this door, these marks should have been included in the joint move-out condition report if the landlord believed that the tenant was responsible for repairing this item. I dismiss this portion of the landlord's claim without leave to reapply.

As mentioned at the hearing, I also dismiss the landlord's application for the recovery of costs associated with providing photographs for the purpose of this hearing, without leave to reapply. The only hearing related costs for which the landlord can obtain recovery is the \$50.00 filing fee. As the landlord has been partially successful in his application, I allow him to recover this fee from the tenant.

#### Analysis – Tenant's Application

In addition to the provisions of section 67 outlined above, section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In considering the tenant's application, I have taken into account that the tenant supplied no written or photographic evidence to support her claim that she was entitled to a retroactive reduction in rent during the course of her entire tenancy. She produced no witnesses to support her claim. She produced no copies of receipts for the work done to repair weather-stripping or to purchase a heater. I also note that the tenant submitted her application for dispute resolution shortly before the April 2, 2015 hearing of the male landlord's initial application for a monetary

award of \$2,060.38 for damage arising out of this tenancy. The tenant confirmed that this was the first written notification that she had given to the landlords of any of the problems identified in her application for dispute resolution. The landlords disputed the tenant's claim that she had made verbal requests to address many of these concerns during the course of her tenancy.

The tenant signed a very detailed and specific joint move-in condition inspection report confirming that, with very few exceptions, all aspects of the rental unit were in good condition. Other than a few minor notations regarding stains, the only substantive area where the rental unit was identified as being in anything but good condition related to the carpet in the master bedroom, which was discoloured with stains. At the hearing, the landlords clarified that their application for compensation to replace carpet was limited to the living room and the hallway, and not either bedroom. The landlords also took photographs of the condition of the rental unit when this tenancy began, which they attached to the completed copy of the joint move-in condition inspection report they handed to the tenant. The tenant confirmed receipt of these photographs, which accurately reflected the condition of the rental unit at that time.

I find that the tenant has failed to identify how a number of the items outlined in the tenant's list of deficiencies were the landlord's responsibility or would have entitled her to any form of monetary award. For example, as the female landlord noted at the hearing, neither of the tenancy agreements the tenant signed showed the landlords as being responsible for providing her with cable television or internet service. While the landlords apparently allowed the tenant to connect with their own service from their living quarters upstairs, this does not equate to a formal commitment by the landlords to provide these services as part of the tenant's monthly rent. Similarly, tenants are expected to replace light bulbs during the course of a tenancy. As there was no indication in the joint move-in condition inspection report that light bulbs were missing or were not working, it became the tenant's responsibility to replace bulbs that burnt out during her tenancy. I also find that the tenant has failed to demonstrate that the landlords were in any way responsible for any occasional mail delivery problems the tenant may have encountered. I also find no merit whatsoever to the tenant's claim that she should be entitled to a monetary award for a reduction in the value of her tenancy due to her requirement to shovel snow from her basement entrance and stairs on two occasions during her entire tenancy.

I have also taken into account that the tenant signed a new six-month fixed term tenancy agreement, after she had been living in the rental unit for six months. I find that her signing of this second fixed term calls into serious question the credibility of her claim that the living conditions in the rental unit were sub-standard and entitle her to a monetary award for the loss in value of the services and facilities she expected to receive when she entered into her tenancy agreements. By March 2014, when she signed this second fixed term agreement, she clearly knew about all of the items identified in her list of deficiencies with this rental unit, but still chose to remain there for the same \$900.00 monthly rent and not at some reduced rate.

Having considered all of the above evidence, I find that the tenant has failed to demonstrate any entitlement to the retroactive reduction in rent she has requested. She has also failed to



demonstrate any entitlement to a monetary award for any of the expenditures she claims to have incurred. For these reasons, I dismiss the tenant's application for a monetary award for losses and damages arising out of this tenancy without leave to reapply.

Based on the findings regarding the landlord's claim, I allow the landlord to retain a total of \$652.58 ( $\$260.97 + \$200.00 + \$141.61 + \$50.00 = \$652.58$ ) from the \$900.00 in deposits the landlord(s) continue to hold from this tenancy. I allow the tenant's application to obtain a return of the remaining \$247.42 portion of her deposits in accordance with section 38 of the Act. I order the landlord to return this amount from these deposits to the tenant forthwith.

### Conclusion

I issue a monetary Order in the tenant's favour against both landlords under the following terms, which allows the landlord to recover damage and losses arising out of this tenancy and to recover the landlord's filing fee and to retain a portion of the tenant's deposits:

Item	Amount
Damage to Carpet ( $\$260.97 + \$200.00 = \$460.97$ )	\$460.97
Unpaid Gas and Hydro Utility Bills	141.61
Less Deposits (2 x \$450.00)	-900.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order</b>	<b>(\$247.42)</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 08, 2015

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Residential Tenancy Branch

