



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The male tenant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

At the outset of the hearing the parties agreed that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed this this month to month tenancy was entered into under a verbal agreement and started on September 01, 2014. Rent for this unit was \$800.00 per month due on the first of each month. The tenants paid a security deposit of \$400.00 in December, 2014. The tenant testified that he also paid a pet deposit of \$350.00; however, the landlord disputed this. The tenancy ended on August 27, 2015.

The landlord testified that the tenants were given the use of the landlord's snow blower during the tenancy. This was stored at the rental unit and the tenants had sole possession and control of the snow blower. In July, 2015 the tenants went to Vancouver and asked the landlord if she would look after their dogs. The tenants were gone for about a week. The day before the tenants came back the snow blower was still at the rental unit, the tenants came back around 8.30 p.m. and the next day they came to tell the landlord that the snow blower was missing. The landlord called the police and reported the theft. The landlord has provided a police file number in documentary evidence. The landlord testified that the snow blower was specially made for the landlord as she required it to have bars. The landlord testified it will cost \$1,780.98 to replace the snow blower. The landlord agreed she does have insurance but does not wish to make a claim against her insurance as there is a \$500.00 deductible and her premiums will increase.

The landlord testified that the tenants had called the landlord and said the septic must be acting up as there was a sewer smell in the unit. The landlord explained that it could not be the septic as it had just been pumped out. The tenants informed the landlord that they had to close the spare bedroom door. Sometime later the tenant called to say there was a leak in the wall. The landlord went to the unit and found the mattress and floor was wet, the drywall between the bathroom and spare room was wet and this was probably the sewer smell the tenants could smell. There were no pipes in the wall and there was no wet on the floor around the hotwater tank so the leak could not have been caused from this area.

The landlord testified that the water leak had gone from the bathroom through to the spare bedroom. The landlord noticed that the tenants' own washer was out on the back porch. The tenants informed the landlord it was a washer they got for free and it had been hooked up to the washer pipes in the bathroom. The landlord testified that the washer had leaked and caused damage to the bathroom subfloor and linoleum, the drywall between the bathroom and spare room and the subfloor and carpet in the spare room.

The landlord seeks to recover the costs incurred to replace the subfloor and linoleum in the bathroom of \$388.50 which includes labour costs; and to replace the drywall in the bathroom and spare room, and replace the subfloor and the carpet in the spare room. The landlords to recover an amount of \$70.00 for the drywall including labour, \$77.00 for the subfloor (piece of landlord's spare subfloor was used) and \$483.00 for the carpet including labour to a total amount of \$630.00.

The landlord testified that the tenants were given a One Month Notice to End Tenancy in July, 2015. Since then the tenants allowed their dogs to urinate and defecate on the living room carpet. When the landlord went to the unit she saw urine stains and feces on the carpet. Prior to this tenancy there was only one pink wax stain on the carpet which was two years old. The landlord testified that she tried to have the carpet professionally cleaned and also had a friend clean it but the stains and smell of urine could not be removed. The landlord seeks to recover the costs to replace the carpet and underlay of \$2,110.00. The landlord testified that this work has not yet been completed but the landlord has obtained quotes from her contractor and a carpet company.

The landlord seeks an Order to be permitted to keep the security deposit of \$400.00 in partial satisfaction of her claim. The landlord also seeks to recover the filing fee of \$50.00 from the tenants.

The tenant testified that they went to Vancouver in July, 2015 and when they got home it was around 8.30 p.m. after an eight hour drive they were very tired and went to bed.

They did not notice if the snow blower was there or not. The next day the tenants realized the snow blower was missing and notified the landlord. The tenant testified that it could have been stolen while they were away yet the landlord accused the tenants of stealing it and selling it for drugs. The tenant testified that the police came and took a statement from the tenants but the tenants have heard nothing else from the police.

The tenant testified that when they moved into the unit the landlord had the snow blower in her garage, when the landlord gave the snow blower to the tenants to use, the tenants built a compartment on the front porch to keep the snow bower in. This compartment just sheltered the snow blower from the weather but it was not secure. The landlord seemed happy with this arrangement and never told the tenants to keep it under lock and key. The tenants therefore disputed the landlord's claim to recover the cost of the snow blower.

The tenant agreed that their washer did leak but not for two to three weeks. When the tenants first noticed it was leaking they put it outside on the porch and called the landlord. The landlord came over and the tenants and landlord inspected the walls and they were dry. It was determined that the water in the spare room was a leak from the washer. The tenant testified that he is not disputing that their washer caused some damage and that he did agree to pay for the subfloor and half the carpet replacement costs in the spare bedroom. The tenant disputed that the drywall was damaged or that there was any damage to the bathroom. The tenant testified that the landlord asked the tenant to rip up the linoleum in the bathroom as it was old and she wanted to replace it but there was no damage to the subfloor. The tenant had a contractor come into the unit and he replaced the subfloor in the spare bedroom and the landlord paid the contractor for this work. The tenant testified that after they left the unit the landlord must have got in other contractors to do additional work.

The tenant disputed that they allowed their dogs to urinate or defecate on the living room carpet. The carpet was steam cleaned when they left the unit, everything was

clean and there was no smell of urine. The landlord had told the tenants not to clean the carpet but the tenants wanted to do the right thing so had it cleaned anyways.

The tenant testified that they had paid a security and pet deposit to the landlord. The tenant agreed the landlord may keep \$318.50 from the security deposit to pay for some of the damage in the spare room.

The landlord disputed the tenant's claim and testified that no pet damage deposit was paid and the landlord did not agree the tenants only had to pay half the cost for the carpet in the spare room. The landlord testified that the water from the leaking washer seeped up the drywall on both sides of the wall between the bathroom and spare bedroom and this was replaced by the contractor.

The landlord declined to cross examine the tenant.

The tenant asked the landlord if after the tenants had vacated the unit did the landlord get any other damages repaired. The landlord responded yes except the living room rug. The tenant asked the landlord if the landlord has replaced the living room and hallway rugs. The landlord responded only the hallway rug has been replaced so far.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlord's claim for damages. With regard to the missing snow blower; I find the landlord has insufficient evidence to show that the snow blower was either stolen by the tenants or stolen through the tenants' actions or neglect. The landlord was satisfied with the location of the snow blower and how it was stored at the rental property. If the landlord had any concerns about theft the landlord should have stored the snow blower on her own property under lock and key or ensured the snow blower could not be stolen from the tenants' property. Furthermore there is insufficient evidence that any charges were brought against the tenants for theft by the police. As the landlord has failed to meet the burden of proof in this matter I must dismiss this section of the landlord's claim without leave to reapply.

With regard to the landlord's claim for damage to the bathroom and spare room; I am satisfied that the tenants' washer did cause some damage. The tenant agreed that the subfloor and carpet was damaged in the spare room but disputed that there was damage to the drywall and bathroom. The landlord has insufficient evidence to show that the drywall was damaged or that the bathroom flooring was damaged. The landlord has provided no evidence to show damage or the actual costs incurred to repair the damage. Consequently, it is my decision that the landlord is entitled to recover costs

incurred to replace the subfloor in the spare room of \$77.00. The tenant testified that he only agreed to pay for half the costs to replace the carpet; however, as the tenant also agreed that the carpet was damaged due to the leak from their own washer then I must find the tenants are responsible for the costs of the carpet. The landlord has not provided the invoice showing the actual cost to replace the carpet and consequently I must limit the landlord's claim for carpet replacement in the spare room to an amount of \$400.00. The landlord has failed to meet the test with regard to the drywall repair and any damage to the bathroom. These sections of the landlord's claim are dismissed without leave to reapply.

With regard to the landlord's claim for replacement costs for the living room carpet; the landlord has provided insufficient evidence to show that the tenants' dogs urinated and defecated on the living room carpet. The tenant argued that they had the carpet steam cleaned at the end of the tenancy and no staining or smells were present. When one person's testimony contradicts that of the other then the person making the claim has the burden of proof. In this matter I find it is one person's word against that of the other and each person's testimony is equally probable. Therefore, in the absence of any corroborating evidence from the landlord, the burden of proof is not met. I must therefore dismiss the landlord's application for a replacement living room carpet without leave to reapply.

As the landlord's claim has some merit, I Order the landlord to keep the tenants' security deposit of \$400.00 pursuant to s.38(4)(b) of the *Act*. This amount has been offset against the landlord's successful portion of her claim. I also find the landlord is entitled to recover the filing fee of \$50.00 from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* as follows:

Repairs to subfloor in spare room	\$77.00
Carpet replacement in spare room	\$400.00
Filing fee	\$50.00

Less security deposit	(-\$400.00)
<b>Total amount due to the landlord</b>	<b>\$127.00</b>

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$127.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: October 22, 2015

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Residential Tenancy Branch



