



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, OLC, FF

### Introduction

This hearing was convened to address claims by each of the parties. The landlord applied for a monetary order and an order permitting her to retain the security deposit while the tenant applied for a monetary order and the return of her security deposit. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on July 1, 2012 and ended in April 2015. They further agreed that rent was set at \$1,770.00 and that the tenant paid an \$870.00 security deposit and a \$400.00 pet deposit. They further agreed that a condition inspection of the unit was not performed at the time the tenant moved into the unit.

The landlord seeks to recover the cost of replacing the carpet in the rental unit at the end of the tenancy. She testified that the carpet was in good condition and that the tenant or her cat caused a number of pulls in the carpet affecting its appearance. She provided photographs of the carpet showing that there were a significant number of affected areas. The landlord provided 2 estimates for carpet replacement, one for \$954.21 and the other for \$802.83 and testified that instead of replacing the carpet with a new carpet, she chose to install laminate at a cost of \$1,100.00. The landlord testified that the carpet was approximately 16 years old.

The tenant denied that her cat had done any damage to the carpet and testified that the carpet was in poor condition at the beginning of the tenancy and that when she vacuumed, she discovered that her vacuum caused the carpet pulls.

The landlord seeks to recover \$504.00 as the estimated cost of repairing a window frame which was damaged by an air conditioning unit installed by the tenant. The parties agreed that during the tenancy, the parties split the cost of an air conditioning unit and that the tenant installed the unit in a window. At the end of the tenancy, the tenant removed the air conditioning unit from the window, causing some damage to the metal window frame and the wooden frame surrounding it. The tenant argued that the air conditioner could not have remained in the window year round because it would permit cold air to enter the unit and testified that paint in the area was damaged when she moved into the unit.

The landlord seeks to recover \$178.00 as the cost of removing the bedroom's sliding closet door casing and frame, refitting and reassembling it. The landlord testified that at the end of the tenancy, she discovered that the door did not slide and testified that she was able to adjust the track to allow the door to close. The tenant argued that the door was broken when she moved into the unit.

The tenant seeks an award of 1 month's rent pursuant to section 51 of the Act. The parties agreed that the landlord asked the tenant to vacate the unit because the landlord had to move into the unit, but the landlord did not use the form required by the Residential Tenancy Act. The landlord argued that the tenancy relationship was an informal one and therefore came to an informal end.

Both parties seek to recover the filing fees paid to bring their respective applications.

### Analysis

The tenant acknowledged that carpet pulls occurred during the tenancy. I find it more likely than not that the tenant damaged the carpet, either through the actions of her cat or by a malfunctioning vacuum cleaner. I find it very unlikely that pulls and snags in the carpet would have been caused by a vacuum, but even if they were, the tenant had an obligation to stop using a vacuum that was causing damage. Residential Tenancy Policy Guideline provides a depreciation table showing the useful life of building elements and identifies the useful life of indoor carpet as 10 years. As the carpet has long since expended its useful life, I can only award the landlord nominal damages. I find that an award of \$50.00 will adequately compensate the landlord and I award her that sum.

The parties did not conduct an inspection of the unit at the outset of the tenancy and it is therefore difficult for me to determine what the condition of the unit was at the time the tenancy began. The tenant claimed that the damage to the painted window frame was there when the tenancy began while the landlord denied that this was the case. The

landlord bears the burden of proving that the tenant damaged the window frame beyond what may be characterized as reasonable wear and tear. The only evidence from the landlord is her testimony that damage occurred, photographs which are not sufficiently clear or enlarged to show the alleged damage to the metal frame and an estimate from a party who did not view the damage but relied on the landlord's description. I am not satisfied that the damage in question did not exist at the time the tenancy began or that the damage may be characterized as going beyond reasonable wear and tear and for that reason, I dismiss the claim.

The landlord claims the cost of removing, adjusting and reinstalling the track on which the sliding door in the bedroom glides, but at the hearing she testified that she was able to adjust the door and did not indicate that any monies were expended to accomplish this. I find that the landlord has not proven that she suffered any financial loss as a result of the problem with the track and therefore I dismiss the claim.

As the landlord has been substantially unsuccessful in her claim, I find she should bear the cost of her filing fee.

The parties agreed that the landlord ended the tenancy because she had to move back into the rental unit. Section 52 of the Act requires the landlord to use a specific form to end the tenancy and further requires the landlord to pay the tenant one month of compensation in such an event. Although the landlord claimed that the tenancy arrangement was an informal one, she cannot escape the operation of the Act and cannot escape her obligation to pay compensation by failing to use the proper form as required by the Act. I find that the landlord ended the tenancy pursuant to section 49 and is therefore liable under section 51 to pay the tenant one month's rent in compensation. I award the tenant \$1,770.00.

As the tenant was successful in her claim, I find she should recover from the landlord the \$50.00 filing fee and I award her \$50.00 for a total award of \$1,820.00.

The tenant has been awarded \$1,820.00 and the \$400.00 pet deposit and \$870.00 security deposit must also be credited to her for a total of \$3,090.00. The landlord has been awarded \$50.00. Setting off these claims as against each other leaves a balance of \$3,040.00 owing by the landlord to the tenant and I order the landlord to pay this sum to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$3,040.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord may retain \$50.00 from the security deposit. The tenant is granted a monetary order for \$3,040.00.

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

