



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset the both parties confirmed that the landlord served the tenant with an amended application for dispute resolution lowering the monetary claim to \$1,647.01.

### Preliminary Issue

The hearing was adjourned to allow the landlord to re-serve the tenant with the landlord's substantive documentary evidence which consists of:

- The Original Notice of Hearing Package
- The landlord's documentary evidence (copy of signed tenancy agreement, a copy of the completed condition inspection report for the move-in and the move-out and a copy of the tenant's notice to vacate.)

Both parties were cautioned with Rule 3.19 that neither party shall submit any further evidence , save and except for the tenant who is at liberty to submit any evidence to dispute the landlord's documentary evidence no less than 2 weeks prior to the scheduled adjourned hearing date.

On January 19, 2016 the hearing was reconvened by conference call where both parties attended.

Both parties have confirmed that the landlord served the tenants with the landlord's substantive documentary evidence which consists of:

- The Original Notice of Hearing Package
- The landlord's documentary evidence (copy of signed tenancy agreement, a copy of the completed condition inspection report for the move-in and the move-out and a copy of the tenant's notice to vacate.)

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

This tenancy began on October 1, 2010 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 1, 2010. The monthly rent was \$775.00 payable on the 1<sup>st</sup> day of each month which was later increased to \$792.00 as per a notice of rent increase dated June 11, 2014 with the increase to begin on October 1, 2014. A condition inspection report for the move-in was completed by both parties on October 1, 2010.

The landlord seeks an amended monetary claim of \$1,647.01 which consists of:

Cleaning (15 hours)	\$525.00
Refuse Removal (8 hours)	\$440.00
Window/Door Repair	\$55.00
Painting Doors	\$220.00
Drywall Repairs	\$165.00

Paint Supplies	\$67.70
Paint Supplies	\$8.92
Glass for Door Window	\$8.94
Rug Cleaning	\$156.45

The landlord stated that the tenant vacated the rental unit on April 30, 2015 as per a notice to vacate given on March 31, 2015 by letter to end the tenancy on April 30, 2015. A condition inspection report for the move-out was completed on May 5, 2015 without the tenant.

During the move-out inspection on May 5, 2015 it was discovered that the tenants left the rental extremely dirty and that all of the door frames in the rental property were damaged beyond wear and tear. The landlord relies upon:

- The completed condition inspection report for the move-in.
- The incomplete condition inspection report for the move-out.
- The submitted copies of receipts/invoices (for Sparkle Kleen(Rug Cleaning), HomeDepot(Glass insert), HomeHardware(Paint/Supplies) and the landlord's time sheets for labour to perform repairs.

The landlord stated that it was a requirement of the tenancy for the tenants to professionally clean the carpet upon vacating the rental unit.

The tenants have both disputed the landlord's claims stating that the rental unit was left with no damage other than was noted in the original condition inspection report for the move-in. The tenant disputed the landlord's claims stating that there was some wear and tear as they had lived in the rental property for 5 years and that they spent 6 hours cleaning the rental property prior to vacating it on April 25, 2015. The tenant confirmed in his direct testimony that the rear door was damaged during the tenancy due to a break-in, but was unable to provide any supporting evidence that the landlord was notified to repair it during the tenancy. The tenants confirmed that the carpets were not professionally cleaned and but that they were of such poor condition due to wear and tear that there was no point. The tenants rely upon the numerous notations of damage to the rental unit which were noted on the completed condition inspection report during the move-in.

## 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The tenants provided no documentary evidence and the landlord relied upon a completed condition inspection report for the move-in and an incomplete inspection report for the move-out for comparison of the condition of the rental unit before and after the tenants took possession of the rental property. Notations on the completed condition inspection for Woodwork, Doors, and Trim for the move-in noted a “satisfactory” grading for the condition of the rental property. Upon move-out the landlord noted, “W-C” for Normal Wear and Tear/Needs Cleaning, “Scuffed”, and “Chipped” on all of the door frames. The landlord’s claim for professional carpet cleaning is not a condition of the rental agreement. The landlord’s form for a “Notice to Vacate” which was signed by the tenants shows the only notation for professional carpet cleaning. The tenants also noted that the flooring and general condition of the rental was quite worn as noted on the completed condition inspection report at the move-in. The landlord’s claim for replacement of a broken glass panel in the rear door was not noted on the incomplete report. The landlord relied primarily on their submitted time sheets for work performed by their employees.

Based upon the evidence of the landlord, I find on a balance of probability that I prefer the testimony of the landlords over that of the tenants regarding the condition of the rental unit. The landlords have provided sufficient evidence to satisfy me of the condition of the rental unit before and after the tenants took possession of the rental unit. The landlords have established a monetary claim for cleaning (\$525.00), refuse removal (\$440.00), backdoor repairs (\$55.00), backdoor glass insert replacement (\$8.94), painting door all door frames (\$220.00), drywall repairs (\$165.00), paint supplies (\$67.70 and \$8.92), totalling \$1,490.56.

However, Residential Tenancy Branch Policy Guideline #40, Useful life of Building Elements state that interior paint have a lifespan of 4 years. The tenant provided

undisputed testimony that they have been residing in the rental property for approximately 5 years. On this basis, I find that the landlord's claim for painting and painting supplies are dismissed as the useful life of the interior paint has exceeded the 4 year period.

The landlord's claim for \$156.45 for rug cleaning is denied. The landlord has failed to provide sufficient evidence to satisfy me that professional rug cleaning was required. The only notation of a requirement was on the "Notice to Vacate" and not on the signed tenancy agreement. I also find that the move-in and the move-out report both shows that the carpet/flooring had burn holes, stains and was noted as worn and old. The landlord has failed to provide sufficient evidence for a comparison for before and after the tenant took possession of the rental.

The landlord gave evidence that she continues to hold the tenant's security deposit of \$387.50. Over that period, no interest is payable on the landlord's retention of the security deposit. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$856.44 under the following terms:

Item	Amount
Cleaning	\$525.00
Refuse Removal	440.00
Window/Door Repair	55.00
Drywall Repairs	165.00
Replacement Glass Insert back door	8.94
Recover Filing Fee	50.00
Offset Security Deposit	-387.50
<b>Total Monetary Order</b>	<b>\$856.44</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(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: January 21, 2016

---

Residential Tenancy Branch

