



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and the tenant confirmed the landlord served the Application for Dispute Resolution on her by registered mail. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

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

Has the landlord proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed the tenancy commenced March 1, 2012 on a fixed term which lapsed and became a month to month. Rent was \$700 a month and a security deposit of \$350 was paid. The tenant vacated March 31, 2016 and no rent was owed. A condition inspection report was done at move-in and the move out report was signed by the landlord only. The landlord said he and the tenant attended on March 31, 2016 but the tenant left in a taxi and said she was coming back but did not come back to sign the report. The tenant said she disagreed when the landlord said he was going to charge extra for damages. She only agreed to a carpet cleaning charge. The evidence was the carpet was new in 2011, the unit was painted just before the tenancy and the blinds were 4 years old.

The landlord claims as follows:

1. \$521.25 to replace the carpet which had about 30 burns and also wax on it. The tenant said she does not smoke but her mother visited a few times. She said she did not think there were 30 burns. The carpet was 5 years old at move-out.
2. \$600: to paint the unit (labour and materials). Paint was 4 years old.

3. \$115: to replace venetian blinds. Some were broken at move-in but the landlord said he is only charging for 2 in the bedrooms which were fine at move-in. They were 4 years old.
4. \$100: for repairs and labour. The landlord provided photographs of many plugs put into the wall by the tenant. He said the unit had to be cleaned, there was wax on heaters and floors and a broken door in the child's bedroom. The tenant said she did not think the landlord should be charging for his labour to fix up his unit. She said there was some wax dripped from a candle, she put plugs in the walls to hang pictures and some shelves and she had no memory of the broken door.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

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.

### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage beyond reasonable wear and tear. I find the amount of damage and cost to repair is supported by statements, photographs and invoices.

The Residential Policy Guideline #40 assigns a useful life to building elements in rented premises. I find carpets are assigned a useful life of 10 years and this carpet was 5

years old. I find the weight of the evidence is that the carpet was damaged by burns and wax. I find the landlord entitled to recover 50% of the cost of carpet replacement for the 5 useful years of life remaining in the damaged carpet for a total recovery of \$260.62.

I find paint has a useful life of 4 years in the Guideline to account for reasonable wear and tear so I find the landlord not entitled to recover the cost of painting as the paint was at the end of its useful life.

I find the weight of the evidence is that the tenant damaged some venetian blinds. Although she denied knowledge of this, I find this damage was not noted in the move-in report and the landlord's photograph on April 1, 2016 just after she moved out illustrates the damage to the blinds. The new tenant who was delayed at move-in viewed the suite with the landlord on April 1, 2016 and confirmed viewing the damage. The Guideline assigns a useful life of 10 years to such blinds so I find the landlord entitled to recover 50% of his cost to replace these 5 year old blinds which results in an allowance of \$57.50.

I find compelling evidence that much repair was needed to the suite. I find the landlord entitled to recover \$100 as claimed for the repairs. Although the tenant questioned the landlord being entitled to recover costs of his own labour, I find section 7 of the Act as quoted above provides if a party incurs costs as a result of the other party's actions, they are entitled to be compensated. I find the landlord had to repair walls, a door and clean the unit and he is entitled to costs of his labour. I find his charge is reasonable considering what had to be done.

I find the tenant gave evidence that she told the landlord to retain \$125 from her security deposit for carpet cleaning as this was one of the terms of her lease. This permission will be used in the calculation below.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Carpet allowance	260.62
Venetian Blind allowance	57.50
Repairs	100.00

Carpet cleaning tenant agreed deduction	125.00
Filing fee	100.00
Less security deposit (no interest 2012-2016)	-350.00
<b>Total Monetary Order to Landlord</b>	<b>293.12</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: June 15, 2016

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Residential Tenancy Branch