



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALLIE LAU REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNR OPR

### Introduction

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

- an Order of Possession for Unpaid Rent or Utilities pursuant to section 55;
- a monetary order for unpaid rent 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 and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants confirmed receipt of the landlord's application for dispute resolution and both parties confirmed receipt of the other's evidentiary submissions for this hearing. At the outset of this hearing, both parties confirmed that the tenants had vacated the rental unit on June 30, 2016.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, loss and/or utilities?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award as a result of this hearing?

### Background and Evidence

This tenancy began on June 11, 2013 as a fixed term. At the end of the fixed term, the tenancy continued on a month to month basis. The rental amount of \$3400.00 indicated on the residential tenancy agreement was reduced to \$3200.00 payable on the first of each month on a permanent basis. The landlord testified that she continues to hold a \$1700.00 security deposit paid by the tenants on May 29, 2013.

The tenants vacated the residence on June 30, 2016. Both parties agreed that a condition inspection was done at both the start and end of this tenancy. A copy of the condition inspection report was provided as evidence for this hearing. Both parties agreed that, at the end of the

tenancy, the tenants did not have the carpets shampooed or professionally cleaned. The tenant MD testified that the tenants were not required to clean the carpets as they had resided in the rental unit for 3 years and the landlord had not cleaned the carpets during that time.

The tenants submitted photographs to show that they cleaned the residence before vacating the rental unit. The photographs showed the two tenants cleaning and the results: tidy, neat premises. The tenant MD testified that, because of repairs that he had done over the course of the tenancy, the rental unit was in better condition than at the start of the tenancy.

The tenant MD testified that he did not pay rent in June 2016. The landlord testified that the tenants owe \$3200.00 for the month of June 2016 as both tenants resided in the unit until June 30, 2016. The tenant MD testified that he did not feel he should be required to pay for June rent because of the outstanding monies owed by the landlord to the tenant, including bills for repairs within the residence over the course of the tenancy. The tenant submitted a copy of those invoices/bills. The tenant submitted, at this hearing that he sought to recover these amounts however the tenant had not made an application to the Residential Tenancy Branch as of the date of this hearing.

### 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.

Residential Tenancy Policy Guideline No. 1 describes the responsibilities of both the landlord and the tenant,

The Landlord is responsible for ensuring that rental units and property ... meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit ... and property .... The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* ... (the Legislation).

In this case, the landlord claims that the tenants did not leave the residence in a reasonable condition at the end of the tenancy. However, the landlord did not submit sufficient evidence to show that the unit was in poor, unclean condition or to reflect costs incurred by the landlord to clean the premises. Therefore, I find that the landlord has not proven to the burden of proof required that the tenants did not clean the rental unit sufficiently at the end of the tenancy.

The tenant MD, however, acknowledged that the tenants did not clean the carpets at the end of the tenancy. He testified that they were simply vacuumed and that he did not believe the tenants were required to clean the carpets. I provide a further excerpt from Policy Guideline No. 1,

### CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. ...

The tenant is obligated, as per the Residential Tenancy Act, attendant Policy Guidelines and to return the rental unit to a reasonable state of cleanliness and repair to clean the carpet at the end of the tenancy. As the tenants did not do so and as the landlord provided a copy of a carpet cleaning receipt in the amount of \$210.00, I find that the landlord is entitled to recover that amount.

With respect to the June 2016 rent, the tenant MD testified that he and his co-tenant withheld the rent from the landlord because of repairs they had done within the rental unit. As stated above in the policy guideline, a tenant is responsible for repairs over the course of the tenancy that is as a result of the tenant's neglect. Furthermore, if the tenants wish to recover costs related to repairs undertaken within the rental unit, the tenants must apply for dispute resolution to do so. At that time, the tenants will be required to show that the landlord (and not the tenants) is responsible for the necessity of repairs, as well as evidence of the loss/costs that were incurred by the tenants to make these repairs.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the

rent.” A tenant may only deduct all or a portion of the rent if emergency repair costs are incurred by the tenant in accordance with the Act or if the tenant has been given authorization by an arbitrator of the Residential Tenancy Branch to do so. As the tenant was not authorized to withhold rent and he has not made a claim as of the date of this hearing, I find that the landlord is entitled to recover the \$3200.00 June 2016 rent.

Pursuant to section 72(2)(b) of Act, the landlord is entitled to retain the tenants’ \$1700.00 security deposit towards the monetary amount owed by the tenants.

The landlord did not request recovery of the filing fee.

### Conclusion

The application for an order of possession is withdrawn.

I issue a monetary order to the landlord in the amount of \$1710.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: August 03, 2016

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Residential Tenancy Branch

