



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNR, MND, MNDC, MNSD, FF; MNDC, MNSD, FF

### **Introduction**

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

- a monetary order for unpaid rent, damage, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement 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.

This hearing also addressed the tenant's cross application for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's two agents (collectively the "landlord") and tenants along with their advocate (collectively the "tenant") attended the hearing. The landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

The landlord testified that she made the application for a monetary order for unpaid rent in error. Therefore I dismiss this portion of the landlord's claim.

Although the tenants' application indicates the tenants are seeking a monetary order for damage or loss under the *Act*, the tenants only provided documentary evidence and testimony in relation to the security deposit and filing fee. Therefore I dismiss the tenants' application for a money order for damage or loss under the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 8, 2016 on a fixed term tenancy. The tenants remitted a security deposit in the amount of \$597.50 at the start of the tenancy. Rent in the amount of \$1,195.00 was payable on the first of each month. The parties mutually agreed to end the tenancy and the tenants vacated the rental unit on April 30, 2016. New tenants occupied the rental unit May 1, 2016.

The parties agreed that a condition inspection report was conducted at the start and end of tenancy and that a forwarding address was provided at the end of tenancy.

#### Landlord Claims

The landlord seeks to recover the cost of carpet shampooing and subsequent carpet replacement in the total amount of \$3,408.65. The landlord acknowledged that the condition inspection report does not indicate any damage including odour, to the carpet. The landlord explained that at the time of the inspection the carpets were wet from shampooing and smelled only of chemicals. It is the landlord's position that upon drying the new tenants noticed the carpet emitted a noticeable pet odour. The landlord testified that despite having the carpets shampooed again, the smell remained. In order to eliminate the pet odour the carpets were removed and replaced. The landlord estimates the carpet was a year old at the time of

replacement. The landlord submitted a copy of the condition inspection reports, carpet “cleaning” invoice, and carpet replacement invoice.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenants.

### Tenants Claims

The tenants seek the return of their security deposit in the amount of \$597.50 and to recover the \$100.00 filing fee for this application from the landlord.

The tenants indicate that they had the carpets shampooed on April 30, 2016, went through the rental unit with the landlord this same date and the landlord had agreed to return the security deposit based on the condition of the rental unit at that time. The tenants’ testified that the invoice submitted by the landlord indicates the carpets were deodorized, not shampooed following the tenants vacancy. It is the tenants’ position that the carpet did not require replacement and that they should not be held liable for any cost associated with it. The tenants submitted a copy of a letter from the carpet cleaning company they used.

### Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In relation to the landlord’s claim for compensation for shampooing, I find it probable there was some pet odor as a result of a tenancy with a pet. I further find that the landlord’s invoice is evidence the landlord had the carpets deodorized on May 2, 2016, not shampooed. For these reasons, I find the landlord is entitled to compensation for the deodorizing in the amount of \$99.75.

Although the landlord provided evidence in the form of testimony that the carpets contained a persistent odour, I am not satisfied that the odor was strong enough to warrant replacement. The tenants had only been residing in the rental unit with their dog approximately three months. The condition inspection does not indicate any carpet damage in the form of stains or odour. I am not convinced that if the pet odour was that strong, it would not be noticed at the move-out inspection attended by both parties. The landlord estimated that the carpet was replaced May 15, 2016 and explained that the invoice was dated September 30, 2016 because this is the date the invoice was created. I find the landlord has provided insufficient documentary evidence to establish the carpets were replaced on May 15, 2016. For the reasons stated above, I dismiss the landlord’s application for compensation for carpet replacement.

As both parties were partially successful in their applications, I award them each \$50.00 of the \$100.00 filing fee paid.

The landlord has established a damage claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$149.75 of the \$597.50 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$447.75 security deposit balance and \$50.00 filing fee for a total award of \$497.75.

### Conclusion

The landlord is entitled to \$99.75 in damages and \$50.00 for the filing fee. I order the landlord to retain \$149.75 from the security in full compensation of this amount.

The tenant is entitled to the return of the balance of the security deposit. I therefore grant the tenant a monetary order for the balance of the deposit, in the amount of \$497.75 and the filing fee in the amount of \$100.00 for a total of \$597.75.

The landlord's application for a monetary order for the carpet replacement is dismissed without leave to reapply.

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 21, 2016

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Residential Tenancy Branch