



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPN, MND, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords and both tenants attended the hearing. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity question each other.

No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing, the landlord withdrew the application for an Order of Possession stating that it was made in error.

### Issue(s) to be Decided

Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on September 1, 2013, which reverted to a month-to-month tenancy after the first year. The tenants moved out of the rental unit on May 31, 2015. Rent in the amount of \$1,000.00 per month was due on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 which was returned in full to the tenants, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level of the rental home was also tenanted. A copy of the tenancy agreement has been provided.

The landlord further testified that at the beginning of the tenancy the parties did not participate in a move-in condition inspection report because the landlord didn't know it needed to be done. However, the parties participated in a move-out condition inspection report completed at the end of the tenancy, a copy of which has been provided.

The landlords claim that the tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. The tenants were not permitted cats in the rental unit, and had 2. The landlords attempted to save the old carpets, but the smell of cat urine was even in baseboards and concrete. The landlords had to remove the baseboards and treat the concrete, after attempting odor removal products which did not work.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$1,057.93 for new carpeting;
- \$80.82 for odor removal products;
- \$200.00 for labor to disinfect the concrete;
- \$440.00 to remove baseboards and carpet strips;
- \$480.00 for carpet and underlay removal;
- \$26.86 for a carpet removal tool;
- \$14.70 for a carpet kicker, which is a tool needed to stretch carpet against the wall during installation;
- \$200.00 for a junk removal person;
- \$100.00 to install the baseboards;
- \$440.16 for paint and supplies;
- \$141.11 for baseboards and caulking;
- \$11.97 for a drill bit to put on a transition strip, drilling into concrete;
- \$63.78 for transition strip tools;
- \$104.87 for a Miter saw and nail gun to install baseboards;
- \$22.05 for a jig saw;
- \$555.32 for primer and flooring;
- \$19.73 for more paint;

for a total claim of \$3,959.30.

The landlord also testified that the \$200.00 claim for concrete disinfecting and \$440.00 to remove the baseboards and carpet strips were paid to laborers that the landlords had hired, and receipts have been provided. Further, the \$480.00 carpet and underlay

removal invoice includes removing it, taking it outside, and treating it with disinfectant and other products that the landlord purchased. The invoice also includes spraying and cleaning walls, and re-laying the underlay and carpet. The concrete under the carpet had to be treated with primer after bleaching. All floors were damaged due to pet smell. Two rooms at the back had carpets, as well as the hallway and a room in the front. The kitchen had linoleum, and when the landlords replaced it, they decided to replace carpets in 2 rooms and put hardwood in the kitchen and hallway.

When baseboards were removed, new ones had to be painted and wall touch-ups done. Receipts provided from Rona, Home Depot, Home Hardware, and Benjamin Moore add up to the \$440.16 claim for paint and supplies. The landlord testified that the rental unit had been painted just prior to this tenancy, except for the bedroom and living room. No repairs were done to the adjoining unit.

The landlords also claim lost rent from June 1 to July 10, 2015 in the amount of \$1,330.00. The rental unit was re-rented effective July 10, 2015. The landlord had a new tenant for June 1, but they were allergic to cats and so the flooring had to be removed.

**The tenant** testified that if a condition inspection report had been completed at the beginning of the tenancy, the considerable dirt level would have been noted in it. The carpet had not been cleaned and a leak was causing dampness. The landlord confirmed at the beginning of the tenancy that it had not been cleaned. The tenant cleaned them using a personal shampooer, and cleaned them again. The landlord told the tenants at move out that the carpets were 10 years old or more.

With respect to the landlords' claim for damage to walls and baseboards, it was not noticed or claimed in the move-out condition inspection report. Three inspections were done, during which only issues respecting the carpets were discussed.

The landlord says the smell in the carpet was a distinct cat smell, but the tenant testified that he believes it was dogs from a previous tenancy. The new tenant has provided a note saying that it is a dog smell. Also, despite the landlord's concerns about odor, the landlord notes in her email to the new tenants saying that the pet smell has been taken care of and it's dated June 11, prior to removal of the carpets. There were previously dogs in the rental unit and the upstairs tenant had cats. The tenant was permitted 2 dogs so didn't think their cats would be a problem. The tenants' pets have an impeccable record and the next landlords returned deposits in full and no damages have been claimed by other landlords.

The tenant also referred to an email entered into evidence by the landlords from tenants who cancelled their lease because they were allergic to dogs and cats, not just cats. The landlords released them from their lease and stated in the email that they could not guarantee an allergy free home. At one point the landlord didn't agree that the rental unit smelled bad, then said that it no longer smelled bad.

The tenants provided the landlords with a forwarding address in writing on the move-out condition inspection report on May 21, 2015, and the landlords returned \$358.25 which was received on June 18, 2015.

The tenants seek for a dismissal of the landlords' application.

**The landlord**, in closing agreed that his previous testimony was in error, and that the parties had agreed to deduct carpet cleaning costs by email.

### Analysis

Where a party makes a monetary claim as against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

Further, the *Residential Tenancy Act* and the regulations go into great detail about move-in and move-out condition inspection reports, and that the reports are evidence of the condition of the rental unit. In this case, there is no move-in condition inspection report to establish the condition at the beginning of the tenancy.

Any award for damages that I make must not put the landlords in a better financial position than they would be had the tenants not caused any damage. In other words, to order the tenants pay for new carpeting when there was no new carpeting at the beginning of the tenancy would be contrary to the principles of justice. The landlord testified that the carpets were about 10 years old at the beginning of the tenancy. I refer to Residential Tenancy Branch Policy Guideline #40 – Useful Life of Building Elements, which places the useful life of carpeting at 10 years. Therefore, I find that the tenants are not liable to replace carpeting, and the landlords' applications for the following claims are dismissed:

- \$1,057.93 for new carpeting;
- \$440.00 to remove baseboards and carpet strips;
- \$480.00 for carpet and underlay removal.

I am not satisfied that the tenants are responsible for the cost of purchasing tools that the landlords have retained. Therefore, the following claims are also dismissed:

- \$26.86 for a carpet removal tool;
- \$14.70 for a carpet kicker;
- \$11.97 for a drill bit;
- \$63.78 for transition strip tools;
- \$104.87 for a Miter saw and nail gun;
- \$22.05 for a jig saw.

There is no dispute that previous tenants also had pets, and the tenant testified that his pets were well looked after and well behaved. I find it just as likely that the odor and the stains on the concrete were caused by build-up of pets over the years, not just of this tenancy but also previous tenancies. Therefore, I cannot be satisfied that the landlords have established that the damage was caused as a result of the tenants' failure to comply with the *Act* or the tenancy agreement and the landlords' application must be dismissed for the following claims:

- \$80.82 for odor removal products;
- \$200.00 for labor to disinfect the concrete.

The landlord also testified that the rental unit was freshly painted at the beginning of the tenancy except for the bedroom and living room. I have also reviewed the move-out condition inspection report and there is no mention of walls needing paint, or damaged baseboards, or any other claim with respect to floor damage. The landlords' claim for the following are also dismissed:

- \$100.00 to install the baseboards;
- \$440.16 for paint and supplies;
- \$141.11 for baseboards and caulking;
- \$555.32 for primer and flooring;
- \$19.73 for more paint;
- \$200.00 for a junk removal person.

With respect to the landlords' claim for loss of rental revenue, having found that the carpeting would have to have been replaced in any event and that the odor and stains in the concrete were caused by a build-up over the previous tenancies, I cannot be satisfied that the landlords lost rental revenue as a result of the tenants' failure to comply with the *Act*. Therefore, the landlords' application in that regard is also dismissed.

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The balance of the landlords' application is hereby dismissed.

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 27, 2016

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Residential Tenancy Branch