



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, 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 damage to the rental unit, and for money owed or compensation for damage or loss under the Act, 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord through the assistance of her Mandarin Interpreter stated that the tenant was served with the notice of hearing package on the morning of the scheduled hearing date. The tenant through the assistance of her Korean Translator confirmed receiving the landlord's notice of hearing package on the date of the hearing. The tenant stated that she was able to continue despite being served improperly. As such, I find that for the purposes of this hearing both parties have been sufficiently served as per section 90 of the Act.

The landlord stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail November 10, 2016. The tenant stated that although they are prepared to continue, the tenant has not yet had an opportunity to review all of the landlord's evidence or be given an opportunity to submit her own documentary evidence in response. The tenant requests an adjournment to properly respond to the landlord's claim. I find that as the landlord failed to properly serve the tenant with the notice of hearing package and the submitted documentary evidence that an adjournment is warranted to allow the tenant a fair opportunity to respond to the landlord's claim after reviewing the landlord's documentary evidence. The hearing is adjourned.

On January 13, 2017 the hearing was reconvened via conference call with both parties. Both parties confirmed that the landlord re-served the documentary evidence to the tenant. Both parties also confirmed that the tenant served to the landlord copies of her submitted documentary evidence in response. As both parties have attended and have confirmed receipt

of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for loss and recovery of the filing fee?

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2012 on a fixed term tenancy until June 30, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 29, 2012. The monthly rent was \$1,800.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid on May 29, 2012. No condition inspection reports for the move-in or the move-out was completed. The landlord submitted a hand written note which both parties confirmed was a notation of the condition of the rental unit at the beginning of the tenancy.

During the hearing the landlord clarified the monetary claim and withdrew the \$3,000.00 claim for the replacement the concrete for the garage. It was also clarified with both parties that the landlord's expenses (litigation costs) for the application were not recoverable pursuant to section 72 of the Act. The landlord seeks an amended monetary claim of \$13,831.40 which consists of:

\$11,831.40	Estimate to Replace Laminate Flooring, Carpet and the removal/reinstallation of the baseboard trim
\$1,800.00	Loss of Rental Income
\$200.00	Repair Dishwater

The landlord stated that at the end of the tenancy the tenant vacated the rental unit leaving the laminate flooring and carpets damaged and stained beyond repair. The landlord stated that because of the urine stains and odors from the flooring the landlord has been unable to re-rent the unit and has suffered a loss of rental income. The landlord stated that because of the damage caused by the tenant she has been unable to re-rent the unit as is for 6 months, but seeks compensation for the loss of rental income of \$1,800.00 for 1 month of rent. The landlord also seeks compensation of \$200.00 for the repair of the dishwasher. The landlord clarified that no actual expenses have been incurred as no repairs have yet been made. The tenant confirmed that at the end of the tenancy the tenant left the flooring damaged due to pet urine damaging the laminate flooring and carpets. However the tenant argued that this was due to

normal wear and tear. The landlord disputed this stating that normal wear and tear would not be a result of damaged caused by pet urine. The tenant also disputed that the landlord's monetary claimed amount was excessive. Both parties confirmed that the paint in the bathroom ceiling was peeling. The landlord claims that this is as a result of excessive moisture caused by the tenant's neglect. The tenant argued that the paint peeling was as a result of wear and tear, but was unable to provide any details of how normal wear and tear could result from moisture build up and the paint peeling. The landlord confirmed that there was a bathroom exhaust fan and that its' non-use was the most likely cause. The tenant re-iterated that she was unable to provide any details of how this occurred.

The landlord has submitted in support of the claim:

- A handwritten note signed by the tenant, "Walk in report" which states "Everything is Ok except:
  - Two small holes on the main floor.
  - The hanger in the bathroom and lights (2) in the other bathroom will be fixed.
  - A broken handle on the stove.
- A copy of an undated and unsigned condition inspection report for the move-out
- A copy of an 11 page Professional Inspection Report dated October 20, 2016 which primary and sole purpose was to identify damage to the laminate flooring and the carpet.
- 10 photographs documenting the damage to the laminate flooring and the carpet due to urine.
- A quotation to replace laminate flooring and carpets dated October 24, 2016 for \$11, 831.40.

The landlord stated that the laminate flooring and carpet could not be repaired and had to be replaced.

### 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.

Although the tenant has disputed the claims of the landlord, the tenant has confirmed that damage to the laminate flooring and carpets were not present at the beginning of the tenancy. The tenant claims that the damage was the result of normal wear and tear and that the actual amount claimed for damages by the landlord are excessive. In reviewing the landlord's and the tenant's photographic evidence it is clear that there is moisture damage to the laminate flooring as well as stains in the carpet. I note that there is no mention of any damaged flooring in the "Walk in report" signed by the tenant from the beginning of the tenancy. I also note that the professional inspector's commends which notes "This laminate floor cannot be repaired and would need to be replaced in order to bring it back to its original condition" and "The carpet on the stairs and the top floor has stains in every room and on all staircases. There is also a strong odour of urine inside the home. This carpet and underlay would need to be replaced in order to bring it to its original condition."

In the absence of any contradictory evidence by the tenant, I accept the landlord's claim that the tenant caused through her neglect the moisture damage to the laminate flooring and the carpets which were beyond the scope of normal wear and tear. I accept the quotation of \$11,831.40 provided by the landlord and find that this in conjunction with the professional inspection report that the laminate flooring and the carpet had to be replaced as opposed to repaired. Although the tenant argued that the landlord's monetary claim amount was excessive, I find that in the absence of sufficient evidence to the contrary that I accept the quotation provided by the landlord. The landlord is entitled to this portion of the monetary claim of \$11,831.40.

As for the landlord's monetary claim of \$1,800.00 for the loss of rental income, I find that the landlord has failed. The landlord provided undisputed affirmed testimony that no repairs have been made to the rental unit. The tenant disputed the landlord's claims that no effort has been made to re-rent the unit. The landlord relies solely on her direct testimony and has failed to provide any supporting evidence to show that she made efforts to mitigate any possible losses by repairing the damages in a timely manner or by providing any supporting evidence that she tried to re-rent the unit.

I find that the landlord has failed to establish a claim for compensation of the \$200.00 for the dishwasher. The landlord claims that the \$200.00 amount for repair is based upon an estimate provided by the tenant. The tenant disputes this and as well states that she is not aware of why the dishwasher has failed to work. The landlord is unable to provide any details of the issue with the dishwasher even though she states that she contacted a repair technician to inspect the dishwasher. In this case, the landlord has failed to show that the tenant was negligent causing damage to the dishwasher and as well failing to provide any relevant details of what if any issues are wrong with the dishwasher and an actual amount required for a repair if required. This portion of the landlord's claim is dismissed.

The landlord has established a claim for \$11,831.40 in damages to the laminate flooring and the carpeting.

As the landlord has been substantially successful, I grant the recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$900.00 security and the \$900.00 pet damage deposits in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$10,131.40.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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 16, 2017

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Residential Tenancy Branch