



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 14, 2016, Canada post tracking numbers were provided as evidence of service. The landlords stated the packages were returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pick up the packages does not override the deemed service provision of the Act.

The landlords appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on March 1, 2013. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00 (the "Deposits"). The tenancy ended on March 20, 2016.

A move-in condition inspection was completed. The tenants participated in the move-out inspection; however, they refused to sign the document.

The landlords claim as follows:

a.	Cleaning	\$ 262.50
b.	Carpet replacement and installation	\$1,319.19
c.	Drape replacement	\$ 88.37
d.	Replace lighting	\$ 133.34
e.	Repair bug screen	\$ 100.08
f.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,004.20</b>

Cleaning

The landlords testified that the rental unit was left really dirty; the baseboards were not cleaned and were covered in animal hair.

The landlords testified that the bathroom shower had dirty spots, there was a white liquid on the floor, the drain around the bathtub drain was brown and the toilet was not properly cleaned.

The landlords testified that the master bedroom balcony was dirty from cigarette ashes, the blinds and window tracks were not cleaned.

The landlords testified that the kitchen cupboards were not properly cleaned as there was dust in them, the dishwasher still had food particles in it, the oven and under the

appliances were not cleaned, and the kitchen window had dust and animal hair. Filed in evidence are photographs of items not cleaned.

#### Carpet replacement and installation

The landlords testified that the carpets were approximately 7 years old at the time of their replacement.

The landlords testified that the tenants caused damage to the carpets as the transition trip was missing and it appeared to be chewed or scratched by the tenants' animal.

The landlords testified that the carpets were dirty and stained and were required to be replaced. Filed in evidence are photographs of the carpets, the majority of the photographs are the underside of the carpet.

#### Drape replacement

The landlord testified that the drape panels were damaged by the tenant's cats clawing at the fabric. Filed in evidence are photographs of the drapes.

#### Replace lighting

The landlords testified that the tenants broke the master bedroom light fixture. Filed in evidence is a photograph of a broken light fixture.

#### Repair bug screen

The landlords testified that the tenants caused damage to the bug screen. Filed in evidence is photograph of a bug screen.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

### Cleaning

I accept the undisputed testimony of the landlords that the tenants did not leave the rental unit reasonably clean. This is supported by the photographs. I find the tenants breached the Act and the landlords suffered a loss. I find the amount claimed is reasonable and supported by a receipt. Therefore, I find the landlords are entitled to recover the amount of **\$262.50**.

### Replacement and installation of carpet

In this case, I find the landlords have failed to prove the tenants caused damage to the carpets that requires the carpets to be replaced.

While I accept the transition strip was missing, there was no evidence provided to support this small area could not be repaired.

Further, while I accept there is staining showing to the carpets; however, this is to the underside of the carpets, rather than the carpet surface. I find this is unreasonable and makes me questioned the landlords credibly, as I find it highly unlikely that the carpets were removed and any staining noted on the move-in condition inspection report prior to

the tenancy commencing. I find the landlords have failed prove the damage was caused by the neglect of the tenants. Therefore, I dismiss this portion of their claim.

#### Drape replacement

I accept the undisputed evidence of the landlords that the tenants' animals caused damage to the drapery. This is supported by the photographs. I find the tenants breached the Act and the landlords suffered a loss.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the drapes had a useful life span of 10 years. The drapes were seven years old at the time of replacement. I find the landlords are entitled to the depreciated value of thirty percent.

The evidence of the landlords was it cost \$88.37 to replace the drapes. Therefore, I find the landlords are entitled to compensation for the cost of replacing the item in the depreciated amount of **\$26.51**.

#### Replace lighting

I accept the undisputed testimony of the landlords that the tenants broke the light fixture. I find the tenants breached the Act when they failed to repair or replace the fixture.

I have determined based on the guideline that the light fixture had a useful life span of 15 years. The fixture was seven years old at the time of replacement. I find the landlords are entitled to the depreciated value of 66 percent.

The evidence of the landlords was it cost \$133.34 to replace the light fixture. Therefore, I find the landlords are entitled to compensation for the cost of replacing the item in the depreciated amount of **\$88.00**.

#### Repair bug screen

In this case, I do not accept the tenants caused damage to the bug screen that is outside normal wear and tear. The screen was seven years old and while I accept there are very small breaks within the screen, I find this is more likely from normal wear and

tear under reasonable use and the aging process, as you can see in the photograph that the screen is start to fall apart at the where screen meets the metal frame. Therefore, I dismiss this portion of the landlords claim.

I find that the landlords have established a total monetary claim of **\$459.21** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the above amount from the tenants' Deposits in full satisfaction of the claim.

Since the tenants Deposits exceed the amount award to the landlords, I find it appropriate to Order that the landlords return the balance due to the tenants in the amount of **\$540.79**. I grant the tenants an order under section 67 of the Act for the balance due of their Deposits.

### Conclusion

The landlords are granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenants are granted a monetary order for the balance due of their Deposits.

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: April 28, 2017

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Residential Tenancy Branch