



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOUGSHAN VENTURES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

In filing the Application for Dispute Resolution the corporate landlord indicated it was seeking compensation of \$1,075.00 but the landlord subsequently filed a Monetary Order worksheet indicating the landlord was seeking \$963.04. During the hearing, the landlord's agent confirmed that the landlord seeks the lesser amount of \$963.04. The landlord also stated that the security deposit has already been refunded, in full, to the tenant. The tenant confirmed that to be accurate. Accordingly, I amend the Application for Dispute Resolution to indicate the landlord is seeking a Monetary Order in the sum of \$963.04 and withdrawal of the request to retain the security deposit.

### Issue(s) to be Decided

Is the landlord entitled to recover the amounts requested from the tenant?

### Background and Evidence

The tenancy started on January 1, 2016 and ended on September 30, 2017. The tenant was required to pay rent of \$2,150.00 on the first day of every month. The tenant paid a security deposit of \$1,075.00 which has been refunded to the tenant.

A move-in inspection report was prepared and provided as evidence. I noted that it was dated May 27, 2016. The landlord stated that date must be incorrect and the move-in

inspection was likely performed on January 27, 2016. The tenant confirmed that the move-in inspection report was prepared after he moved in but he could not recall the date it was performed.

A move-out inspection was not performed together. The landlord's agent stated that she was at the rental unit at 1:00 p.m. on September 30, 2017 where she met the incoming tenants and they were given keys to the rental unit shortly thereafter. The landlord stated that she had "expected" to do the move-in inspection with the incoming tenants and move-out inspection with the subject tenant at the same time; however, she had not specifically scheduled the move-out inspection with the tenant for this time. Rather, the landlord had proposed 5:30 p.m. on September 30, 2017 to the tenant for the move-out inspection on September 29, 2017 via text message but the tenant declined that proposal and counter-proposed 9:00 p.m. on September 30, 2017 which the landlord declined.

The tenant arrived at the rental unit at approximately 2:00 or 3:00 p.m. on September 30, 2017 to remove some more of his possessions but his carpet cleaners were not coming until 4:00 p.m. or so. The tenant stated that the incoming tenants had already started to move their possessions in. The landlord was at the rental unit again at 4:00 p.m. on September 30, 2017 and stated the incoming tenants starting moving their possessions in after 4:00 p.m.

The landlord pointed out that the tenant was late in moving out of the rental unit as she was supposed to be finished moving out by 1:00 p.m. on September 30, 2017. The tenant acknowledged that he erred in understanding his requirement to vacate by 1:00 p.m. on September 30, 2017 and thought he had until the next day but pointed out that the incoming tenants were moving their possessions into the rental unit early.

The landlord seeks the cost to replace the carpeting in the bedroom in the amount of \$824.44. The landlord provided a written estimate in support of this amount claimed. The landlord provided photographs that she says were taken on October 1, 2017 and October 8, 2018 as well as a letter purportedly written by the incoming tenants. The landlord also produced a condition inspection report dated October 8, 2017 that was performed without the tenant present. The inspection report indicates the bedroom carpeting is stained and needs replacement.

The landlord is of the position the carpeting was stained during the tenancy; that multiple stains remained despite professional carpet cleaning; and, the staining is beyond wear and tear. The landlord described the stains as being make-up and nail

polish in the tenant's teenage daughter's room. The landlord acknowledged that the carpeting has not yet been replaced because the landlord wanted to wait for the hearing to take place first.

The tenant acknowledged that there was one pink stain that did not come out after the carpets were cleaned but that the other stains were removed with carpet cleaning, based on what the carpet cleaner told him. The tenant also stated that he spoke with the incoming tenants who were unconcerned about the stain. The tenant is of the position the carpet does not need replacement and that the carpet reflects two years of wear and tear. The tenant pointed out that the carpeting has yet to be replaced and that the landlord appears to have suffered no loss since there is no indication the rent was reduced for the incoming tenants or that the property has lost value because of the stain. Accordingly, the tenant was not agreeable to compensating the landlord any amount for carpet damage even though he acknowledged there was a permanent stain created during his tenancy.

The tenant also suggested the pink stain could be covered by a dresser. The landlord stated that the stain is not near a wall, not coverable by a dresser, and there is more than one stain.

The parties were in disputes as to whether the tenant could have paid the carpet cleaner more money to perform a more thorough cleaning. Neither party called the carpet cleaner as a witness. Nor, was I provided a copy of the carpet cleaning invoice/receipt.

The parties exchanged several text messages in late September 2017 through mid-October 2017 which the landlord provided as evidence. Below, I have summarized the most relevant communications with respect to the condition of the carpeting.

- On September 30, 2017 at 5:36 p.m. the landlord sends a text message to the tenant indicating that the carpet cleaner could not remove the "make up" out of the carpet. In response, the tenant states he understood that the stains came out. The landlord indicates she will go look herself in a couple of hours when the carpets are dry.
- On October 1, 2017 the landlord indicates again she is waiting for the carpeting to dry to do an inspection of the carpeting. The tenant then acknowledges that there is one small light pink stain in the carpeting. The landlord responds by

indicating she is going to conduct a final inspection and for the tenant to wait to hear from her.

- On October 6, 2017 the tenant enquires about the return of the security deposit and whether the landlord has determined any deductions. In response, the landlord indicates she is still trying to co-ordinate the date and time for an inspection.
- On October 12, 2017 the tenant asks whether the landlord has any figures with respect to deductions from the security deposit. In response, the landlord reports to the tenant that there is “trouble” with the carpet in the bedroom and that the landlord’s other agent wants to replace the carpeting. The tenant takes issue with this, citing wear and tear, only one stain, and the landlord raising this issue 12 days after the new tenants moved in; however, the tenant indicates he is willing to reasonable with respect to deductions from the security deposit. The landlord responds by claiming there are multiple stains, not just one. The landlord suggests the parties inspect the carpet together; however, the tenant points out that the inspection should have been done on September 30, 2017 and when the unit was vacant. The landlord proposes a settlement to the tenant; however, the parties do to reach agreement.

In addition to carpet replacement, the landlord seeks compensation of \$26.05 for replacement light bulbs. The tenant agreed to this charge.

The landlord also requested compensation for photographs and postage costs incurred to serve evidence with respect to this application, in addition to the filing fee. The Act does not permit recovery of costs incurred to prepare for and/or participate in a dispute resolution proceeding with the exception of the filing fee. Accordingly, I dismissed the landlord’s request for recovery of photograph and postage costs summarily during the hearing. I shall consider awarding recovery of the filing fee, or a part thereof, in the analysis section of this decision.

### Analysis

Section 37 of the Act requires that a tenant leave a rental unit undamaged at the end of the tenancy. Section 37 of the Act also provides that reasonable wear and tear is not damage. Accordingly, where a landlord may seek compensation from a tenant where the rental unit is left damaged, but not for reasonable wear and tear.

The parties were in dispute as to whether the carpeting in one of the bedrooms was damaged beyond wear and tear at the end of the tenancy.

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move-in inspection report appears to have been prepared after the tenant moved in; whereas, the regulations provide that a rental unit is to be vacant when a condition inspection is performed. Regardless, the parties were not in dispute that the carpeting was in good condition at the start of the tenancy and I accept that it was.

The move-out inspection was not performed together despite the requirement that “the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection” as provided under section 16(1) of the Act. It appears to me that this requirement and the small window of opportunity for the move-out inspection was exacerbated by the tenant vacating the rental unit late and the landlord providing the incoming tenants with early possession; along with a death in the tenant’s family. In any event, where a proposal and a counter-proposal for a condition inspection are not agreed upon, the landlord is to give the tenant a final proposal, in the approved form. The landlord did not give the tenant a *Notice of Final Opportunity to Schedule a Condition Inspection* (RTB – 22) and went ahead and did the inspection without the tenant on October 8, 2018. Also of consideration is that the rental unit was not vacant when the move-out inspection was performed by the landlord and had been occupied by the new tenants for several days at that time. For these reasons, I find the move-out inspection report was not completed in accordance with the regulations and I do not consider it the best evidence in establishing the condition of the rental unit at the end of the tenancy.

The landlord provided an unsigned letter purportedly written by the incoming tenant. I find the document is not overly helpful in establishing the extent of staining in the bedroom. The incoming tenant describes how there were black and pink stains on the carpeting that were visible before the carpet cleaner arrived. The carpet cleaner came to clean the bedroom and stairs and the carpet cleaner allegedly apologized for not being able to “get all the marks out”. I find this statement is not sufficiently specific for me to determine how many marks were in the bedroom alone. It is not in dispute that

there were stains before the carpet cleaner arrived but the issue to determine is the staining that remained after the carpet cleaner cleaned the carpet in the bedroom.

The landlord also provided photographs of carpet stains for me to consider. Unfortunately, the photographs provided to me are not time and date stamped. In the landlord's written submission, the landlord writes that the photographs were taken a few days after the new tenants moved in. During the hearing, the landlord testified that the photographs were taken on two different dates: October 1, 2017 and October 8, 2017. However, the landlord had also testified that photographs were taken when the incoming tenants took possession of the unit in order to document issues that they were not responsible for and that those photographs included the image of the coffee card. I heard that the incoming tenants had taken possession of the unit shortly after 1:00 p.m. on September 30, 2017. Accordingly, it would appear there is inconsistent evidence as to when some of the photographs were taken and that some of them may have been taken in the early afternoon of September 30, 2017 which is before the tenant's carpet cleaner was there. Accordingly, I find it reasonably likely that the photographs that include the coffee card were taken before the carpets were cleaned.

There are multiple photographs of carpeting in the evidence package provided to me. The landlord submitted to me that the worst room was that occupied by the tenant's teenage daughter. I note that there is only one photograph labeled as belonging to the tenant's teenage daughter and I see one stain in that photograph which is consistent with the tenant's acknowledgement of one stain.

I find the photographs to be the best evidence of carpet staining after the carpets were cleaned. Based on the one photograph labelled as being the tenant's teenage daughter's room without a coffee card visible in the photograph I find I am satisfied that the tenant is responsible for causing one permanent carpet stain.

The landlord argued that the bedroom carpeting requires replacement as a result of the staining which the tenant opposed. Based on the photograph described above and considering the carpet has yet to be replaced, I find I am not satisfied that the staining is so significant that carpet replacement is warranted. Therefore, I deny the landlord's request for the tenant to pay for replacement cost of the bedroom carpeting.

The tenant argued that the landlord should not be awarded any compensation since no loss has been proven by a loss in rental income or property value; however, I find that position is overly restrictive and unreasonable as it fails to take into account that a permanent stain is damage and that the carpeting is less attractive. While the current

tenants may have accepted the carpet in that condition, perhaps future tenants or purchasers of the property will not and the stain will contribute to an earlier replacement of the carpeting than had the stain not been present. Therefore, I find it appropriate to recognize the landlord has likely suffered diminished value of the carpeting and I make a nominal award of \$100.00 to the landlord.

I further award the landlord recovery of costs to replace the burned out light bulbs in the amount of \$26.05 as agreed upon during the hearing.

As for the filing fee, I grant the landlord a partial award of \$25.00 based on the landlord's limited success in this application.

In light of all of the above, I provide the landlord with a Monetary Order in the sum of \$151.05 to serve and enforce upon the tenant [calculated as \$100.00 + \$26.05 + \$25.00].

#### Conclusion

The landlord had partial success in this application and has been provided a Monetary Order in the amount of \$151.05 to serve and enforce upon the tenant.

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: June 1, 2018

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Residential Tenancy Branch