



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0715439 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage 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.

At the outset of the hearing I explored service of hearing documents upon each other and the Residential Tenancy Branch. The landlord had served the tenant via registered mail sent on March 5, 2018. The tenant provided a response, including photographs, by registered mail sent to the landlord on June 21, 2018. The landlord's agent did not pick up the registered mail. The landlord explained he was on vacation for three weeks until July 10, 2018 and when he went to pick up the registered mail on July 11, 2018 it had already been sent back to the tenant. Under the Rules of Procedure, a respondent must serve their evidence no less than seven (7) clear days before the scheduled hearing date and if mail is used to serve, sufficient mailing time must be taken into account. I find the tenant met her obligation to send her evidence to the landlord within the time limits and manner required under the Act and the Rules of Procedure. However, with a view to fairness, I considered the landlord had not received the tenant's package. The landlord acknowledged that he had received the tenant's photographs as part of the evidence submitted by her under a previous Application for Dispute Resolution (file number referenced on the cover page of this decision). The tenant's rebuttal evidence was mostly photographs and a text message with the manager and having been satisfied the landlord was privy to this evidence and I admitted and considered the tenant's evidence.

As mentioned above, the parties had previously participated in a dispute resolution proceeding. The purpose of that proceeding dealt with the tenant's application for return of the security deposit and pet damage deposit. The tenant was awarded return of double the security deposit and pet damage deposit. In completing the monetary claim that is before me, the landlord had added the tenant's Monetary Order to the landlord's monetary claim. The tenant had also submitted evidence to show the landlord has not yet satisfied the Monetary Order. As I informed the parties during the hearing, decisions under the Act are final and binding, subject only to review provisions, and I cannot alter or vary the Monetary Order previously issued to the tenant. Accordingly, I dismissed the landlord's request to add the tenant's Monetary Order to the landlord's claim. Since the security deposit and pet damage deposit has already been ordered returned to the tenant, the landlord's request to retain the security deposit and pet damage deposit is moot and I do not consider that request further. Also, I informed the tenant that she remains at liberty to serve and enforce the Monetary Order already provided to her but that enforcement of a Monetary Order is not the subject of this proceeding. Rather, the issues for me to determine pertain to the landlord's claims for carpet cleaning, junk removal and underlay replacement.

#### Issue(s) to be Decided

Has the landlord established an entitlement to compensation for the tenant for cleaning, junk removal and underlay replacement as claimed?

#### Background and Evidence

The tenancy started on June 15, 2016 and ended on June 27, 2017. A move-in and a move-out inspection report had been prepared by the landlord with the tenant present and the reports were duly executed by both parties.

A security deposit of \$347.50 and a pet damage deposit of \$347.50 had been paid by the tenant. The landlord refunded \$268.25 to the tenant and deducted \$360.00 for carpet cleaning and \$414.25 for junk removal but did not have the tenant's written authorization to deduct these amounts from the tenant's deposits. As a result, an Arbitrator issued a Monetary Order to the tenant in the sum of \$1,816.75 for return of double the deposits, less the partial refund, in response to the tenant's previous Application for Dispute Resolution that was heard on January 29, 2018.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses:

1. Carpet cleaning -- \$360.00

The landlord submitted that the rental unit smelled of cat spray at the end of the tenancy and in an effort to rid the unit of the odour the carpet was cleaned a number of times and a neutralizing solution applied. The landlord pointed to the move-out inspection report where it is noted that there is a cat spray odour in the rental unit along with the landlord's agent initials and the tenant's initials. The landlord provided a copy of an invoice in support of the amount claimed.

Upon my review of the carpet cleaning invoice, the landlord explained that the entity that issued the invoice is a "subsidiary company" of the landlord and the work was done by an employee of the subsidiary company who is paid an hourly rate of \$24.00.

The tenant acknowledged that she would have been responsible for cleaning the carpets because she had a pet but when she asked the landlord about doing so the landlord informed her, via text message, that the landlord would re-do it if the tenant had the carpets cleaned and that she should save her money. Based on that information the tenant did not have the carpets cleaned and thought the landlord would do it, but there was no indication that the landlord would charge the tenant for doing so. The tenant stated that if the tenant knew she would be charged for the landlord cleaning the carpet she would have paid someone to do it or rented a "rug doctor" but the landlord had insisted the tenant had to use a certain type of carpet cleaning equipment.

The tenant acknowledged that she did initial the inspection report in recognition the unit smelled of cat spray but the tenant claimed she was unable to smell it herself. The tenant also claimed the carpet had stains at the start of the tenancy and that she did not cause any new stains. Further, the tenant claims that she was told that the carpeting was due for replacement when she moved in. The tenant also questioned the veracity of the landlord's invoice.

The landlord acknowledged that they insist upon tenants using a truck mounted carpet cleaning company and that tenants are not permitted to use a "rug doctor".

2. Junk removal -- \$414.25

The landlord submitted that on or about the time the tenant was vacating the property other tenants complained that the dumpster was full of items that do not belong in the dumpster such as furniture. The landlord looked in the dumpster and found items that the landlord recognized from the tenant's rental unit. The landlord claims to have hired its subsidiary company, plus use of a truck and trailer, to remove the items from the dumpster and haul them to the dump. The landlord provided a copy of the invoice provided by the landlord's subsidiary company which included a listing of the items removed from the dumpster.

The tenant questioned the veracity of the landlord's invoice and pointed out that no receipt for the dump was produced. The tenant also pointed out that at \$24.00 per hour the employee would have had to spend 17 hours taking the items away and that appears very high. The tenant acknowledged that she put a few pieces of furniture in the dumpster, such as shelving and a lamp shade, but she denied putting a TV in the dumpster, and could not recall putting a bed frame in the dumpster. The tenant also pointed out that there are no labels or signage to indicate the appropriate or inappropriate items to put in the dumpster.

The landlord responded by pointing out that the charge of \$400.00 is not just for labour, but for use of the truck and trailer.

3. Replacement of underlay -- \$2,950.00

The landlord submitted that despite efforts to remove the cat spray smell from the carpeting the odor persisted which necessitated the replacement of the carpet underlay. Beside removal and replacement of the underlay, this job also involved the removal and reinstallation of baseboards and trim, sealing the sub-floor, and removing many staples in the subfloor. This work was performed by the landlord's subsidiary company.

The landlord stated that replacement of the underlay resolved the odor issue. Upon my questioning, the landlord testified that approximately 500 square feet of underlay had to be replaced. However, upon questioning by the tenant, the landlord acknowledged that the entire rental unit is approximately 500 square feet and the carpeted area is approximately one-half of that. The landlord explained that underlay is bought in rolls so there is waste that cannot be returned to the store.

The tenant pointed out that the landlord never approached the tenant about having to replace the underlay after the tenancy ended or at the previous hearing. Rather, the evidence the landlord provided for the previous hearing were the invoices for carpet cleaning and junk removal; and, only after the tenant was awarded double security deposit and pet damage deposit did the landlord allege the underlay had to be replaced. The evidence provided by the landlord is an issued by its subsidiary company without any receipts for the purchase of the materials. The tenant questioned whether the underlay was actually replaced or replaced for the amount claimed. Again, the tenant pointed out that the carpeting was old and in need of replacement anyways.

The landlord acknowledged the carpeting is older but explained that it was not replaced because the unit remained pet-friendly. The landlord explained that once carpeting is replaced the unit becomes a unit where pets are not permitted.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

### ***Carpet cleaning***

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that a tenant is generally held responsible for shampooing or steam cleaning the carpeting if the tenancy is over one year in duration or the tenant had an uncaged pet.

In this case, the tenant had a pet cat in the rental unit. The move-out inspection report which was initialled and signed by the tenant reflects that the unit also had an odour of “cat spray”. Accordingly, I find it reasonable to hold the tenant for cleaning the carpeting, including removal of the odor that was the result of her pet. The tenant appeared to recognize she had an obligation to clean the carpets but at the crux of the dispute was the amount the landlord was entitled to recover from the tenant. The landlord produced an invoice that was not provided by an independent service provider or verifiable. However, I also find the tenant’s submission that she should not pay anything is unreasonable. Even if the tenant had hired her own carpet cleaner or rented a machine and cleaned the carpeting herself there would have been a cost involved.

Accordingly, I consider the landlord’s invoice with a view to reasonableness. The invoice indicates that the carpeting was shampooed and sprayed with an odour neutralizer on three dates: July 3, July 6 and July 10, 2017. Each application was charged at \$120.00 but there is no indication as to how much time was spent for each application. Nor, were estimates of an independent company provided for my consideration. When I consider the carpeted area was only 250 square feet I am of the view that such a small area would not take four hours each time (the landlord’s employee is paid \$24.00 per hour). I am of the view two hours, plus cost of equipment and supplies, is more reasonable in such a small space. I also accept that cat spray is often not eliminated with one application. Accordingly, I find I am satisfied the landlord suffered a loss of approximately one-half of the amount claimed and I award the landlord \$180.00 for carpet cleaning.

### ***Junk removal***

The tenancy agreement provides that rent includes garbage collection. While there is no indication as to the items that may or may not be disposed of in the garbage dumpster in the tenancy agreement or the Addendum, or signage, I find it reasonable that garbage collection refers to typical household waste and not furniture disposal. I also accept that it is reasonable to expect that tenants would not place furniture in the dumpster as doing so would fill up the dumpster pre-maturely which would deprive other tenants from using it and cause the landlord to incur additional dump fees. Accordingly, I accept that disposing of furniture is beyond the scope of garbage collection that a reasonable person would consider a service provided to them by their landlord as part of their tenancy agreement and in disposing of furniture one ought to expect to be held responsible for the costs to remove it from the property.

The evidence the landlord provided in support of its claim for junk removal was the invoice prepared by its subsidiary company that lists the items removed from the dumpster. The invoice indicates there was a dump fee charged, but the receipt issued by the dump was not provided. Nor, was there a breakdown of the time involved in removing the junk and there were no photographs submitted by the landlord. The tenant acknowledged putting some shelving and a lamp shade in the dumpster but denied putting a TV in the dumpster. The tenant stated she could not recall putting a bed frame in the dumpster. Based on the tenant's acknowledgement that she placed shelving in the dumpster, I provide the landlord with a nominal award of \$50.00 to remove the shelving and have it hauled away to the dump. I am unsatisfied that a lamp shade would be so large that it could not be accommodated in the dumpster. I dismiss the balance of this claim since it cannot be verified.

### ***Underlay replacement***

As provided earlier in this decision, I accept that the unit had an odour of cat spray at the end of the tenancy. While I accept that urine or liquid may seep through carpeting to the underlay and possibly the sub-floor, I find the landlord's allegations that the underlay was replaced to be dubious upon considering the following factors.

The landlord produced as evidence the carpet cleaning invoice that indicates the carpeting was shampooed and neutralized three times and that on July 12, 2017 the employee noted found the odour was gone. At the previous dispute resolution hearing that was held in January 2018 the landlord provided the carpet cleaning invoice and the junk removal invoice but no invoice for replacement of the underlay was produced yet the landlord produced for my review an invoice for underlay replacement issued in July 2017. Only after the tenant is awarded double security deposit and pet damage deposit is this underlay replacement invoice produced. The underlay replacement invoice is generated by an employee of a subsidiary company and it is not supported by other receipts from an independent supplier. For instance, the invoice indicates that \$850.00 in materials were purchased, yet there is no receipt/invoice from the supplier of the underlay or other related materials that was provided to support that amount. Further, I am of the view that \$2,950.00 to replace approximately 250 square feet of underlayment, without replacing the carpeting, appears excessive. For these reasons, I find the invoice provided to me lacks veracity in the circumstances and I find I am not satisfied the landlord suffered a loss of \$2,950.00 for replacement of underlay. Therefore, I dismiss this portion of the landlord's claim.

***Filing fee and Monetary Order***

The landlord had limited success in this application and I award the landlord recovery of one-half of the filing fee, or \$50.00 from the tenant.

In keeping with all of the findings and awards provided above, I provide the landlord with a Monetary Order in the sum of \$280.00 to serve and enforce upon the tenant. This amount is the sum of: \$180.00 for carpet cleaning; \$50.00 for junk removal; and, \$50.00 for the filing fee.

**Conclusion**

The landlord has been provided a Monetary Order in the sum of \$280.00 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: July 26, 2018

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Residential Tenancy Branch