



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 72; and
- Reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing (“the landlord” and “the tenant”) and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, call witnesses and make submissions.

The tenant acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution under section 89.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation pursuant to Section 67?

Is the landlord entitled to retain the security deposit pursuant to sec 72?

Is the landlord entitled to reimbursement of the filing fee pursuant to Section 72?

### Background and Evidence

The parties testified the month-to-month tenancy began on March 1, 2016 and ended on February 28, 2018. The rent was \$1,050.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted as evidence.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$525.00. The deposit is held by the landlord. The tenant has not provided written authorization to the landlord to retain the deposit.

A condition inspection was conducted by the parties at the time of moving in and moving out on February 28, 2018. A copy of the condition inspection report was submitted as evidence. The report indicated that all items for which damage is claimed were in good condition at the beginning of the tenancy. The report also noted damage to the carpet on moving out.

The landlord sought a monetary order for the following items, damage calculated as indicated:

| ITEM   | AMOUNT            |
|--|-------------------|
| Carpet in one bedroom – replacement estimate                             | \$604.80          |
| Vanity (sink with storage drawers, cabinet below) - replacement estimate | \$658.94          |
| Washing machine repairs - invoice  | \$135.45          |
| Filing fee reimbursement   | \$100.00          |
| <b>Total</b>   | <b>\$1,499.19</b> |

The landlord's testimony and supporting evidence with respect to each item is summarized as follows:

1. Carpet – reimbursement for replacement cost estimate

- Item was purchased in 2010, although no supporting evidence was submitted regarding price;
- Condition inspection report – indicated no damage on moving in and the presence of stains on moving out;
- Photographs of the damage at the time of moving out;
- Estimate for replacement cost of \$640.00 from an online vendor of a similar unit.

2. Vanity – reimbursement for replacement cost estimate

- Item was purchased in 2010, although no supporting evidence was submitted regarding price;
- Condition inspection report – indicated no damage on moving in or on moving out;
- Photographs of the broken sliders of one drawer, undated, taken after the tenancy ended.

3. Washing machine – reimbursement for repairs

- Item was purchased in 2010, although no supporting evidence was submitted regarding price;
- Repair invoice in the amount of \$135.45.

The tenant's testimony with respect to the claim by the landlord for the carpet replacement was as follows:

- The tenant acknowledged responsibility for the marks;
- The marks were minor and barely visible;
- It was not necessary to replace the carpet;
- The landlord continued to use the carpet and had not replaced it, thereby incurring no reimbursable costs.

The tenant's testimony with respect to the claim by the landlord for the vanity replacement was as follows:

- The tenant used the vanity drawers in a normal way and is not responsible for the breakdown of the drawer sliders which was beyond their control or influence;
- It was not necessary to replace the vanity in its entirety and the sliders could have been replaced at a minimal cost.

The tenant's testimony was as follows with respect to the claim by the landlord for reimbursement for the cost of the washing machine repairs:

- The tenant used the washing machine normally;
- The tenant is not responsible for a repair resulting from normal use;
- The tenant is not responsible for the hair clip in the machine;
- The landlord agreed to pay for the repairs and later changed his mind for reasons which are unclear to the tenant;

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

*Residential Tenancy Policy Guideline #1* explains,

*The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

*The tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear...or neglect by the tenant.*

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other.

To claim for damage or loss under the *Act*, the onus is on the person making the claim. The claimant must prove the existence of the damage/loss, and that it resulted directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a monetary award.

When considering the landlord's claim for damage caused by a tenant, an Arbitrator may consider the useful life of a building element and the age of the item.

*Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". That evidence may be in the form of work orders, invoices or other documentary evidence.

I will consider each of the landlord's claims in turn.

### *Carpet*

The *Policy Guideline #40* contains a table stating the useful life of carpets is 10 years.

In this case, the landlord testified the carpet was 8 years old at the end of the tenancy. I accept the landlord's testimony that the stains could not be removed by cleaning. In the absence of any other evidence, I also accept the landlord's documentary evidence that the estimated cost of replacement of the carpet is \$604.80.

As the tenant acknowledged responsibility for the stains, I find the landlord has met the burden of proof regarding this aspect of the claim.

Applying the *Policy Guideline #40*, the carpet had a remaining life of two years and the tenant is responsible for 2/10 of the estimated replacement cost of \$604.80, being \$120.96.

I accordingly award the landlord \$120.96 for the claim for compensation relating to the carpet.

### *Vanity*

The landlord claims reimbursement for the estimated replacement cost of \$658.94 for the vanity. The landlord claimed his efforts to find parts to repair the broken sliders on the drawers of the vanity were futile and the only solution was to replace the entire unit.

I have considered the parties' testimony, the *Guidelines*, and the standard of proof required of the landlord. I accept the tenant's assertion that the tenant used the vanity in a normal manner. I find the tenant did not cause deliberate damage or damage the item from neglect. As stated in the *Guideline*, the tenant is not responsible for reasonable wear and tear. In any event, I do not find it reasonable that the landlord would claim replacement of an item of this age without evidence of efforts to find replacement parts to fix the sliders.

Accordingly, I deny the landlord's claim for compensation with respect to the vanity without leave to reapply.

### *Washing machine*

The landlord claims reimbursement of \$135.45 for a repair cost for the washing machine during the tenancy.

I accept the parties' evidence that a hair clip created a blockage in the motor leading to the washing machine failing to work during the tenancy and required repairs in the amount claimed by the landlord.

There remains, however, difficulty in attributing this blockage to any action, or inaction on the part of the tenant.

As *Policy Guideline #40* notes:

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.*

The motor is not visible to the naked eye. It would be very difficult to place the burden of removing the item on the tenant given the machine was six years old at the time the tenancy began, was almost eight years old when the repairs took place, had been used by previous tenants, had never been serviced (according to the landlord), and required a skilled person to remove the item to effect repairs.

For these reasons, I dismiss the landlord's application for reimbursement of the cost of repairs to the washing machine.

#### *Filing fee*

As the landlord has been partly successful in his claim, I award the landlord partial reimbursement of the cost of the filing fee in the amount of \$25.00.

#### *Summary*

In summary, I award the landlord the following with respect the landlord's claims:

| ITEM                              | AMOUNT CLAIMED    | AMOUNT AWARDED  |
|-----------------------------------|-------------------|-----------------|
| Carpet – replacement estimate     | \$604.80          | \$120.96        |
| Vanity – replacement estimate     | \$658.94          | 0               |
| Washing machine repairs - invoice | \$135.45          | 0               |
| Filing fee reimbursement          | \$100.00          | \$25.00         |
| <b>TOTAL</b>                      | <b>\$1,499.19</b> | <b>\$145.96</b> |

Further to section 72, I authorize the landlord to deduct the amount of **\$145.96** from the deposit of \$525.00. The landlord is directed to return the balance of the security deposit to the tenant in the amount of **\$379.04** on or before October 31, 2018.

In the event the landlord does not return the balance of the security deposit to the tenant, I grant the tenant a monetary order effective October 31, 2018 in the amount of **\$379.04** calculated as follows:

| ITEM                               | AMOUNT          |
|------------------------------------|-----------------|
| Security Deposit                   | \$525.00        |
| (Awarded to the landlord)          | (\$145.96)      |
| <b>Balance of Security Deposit</b> | <b>\$379.04</b> |

Conclusion

The landlord is ordered to return the balance of the security deposit to the tenant in the amount of **\$379.04** on or before October 31, 2018.

In the event the landlord fails to return the security deposit as ordered, the tenant is awarded a monetary order in the amount of **\$379.04** effective October 31, 2018. This order must be served upon the landlord. If the landlord fails to comply with this 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: October 05, 2018

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Residential Tenancy Branch