



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDLS FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for damage and loss pursuant to section 67 and recovery of the filing fee pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies of the parties I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in November, 2016 and ended in April, 2017. The monthly rent was \$800.00. A security deposit of \$400.00 and pet damage deposit of \$400.00 was paid at the start of the tenancy. The deposits have been returned to the tenant in full in accordance with a settlement agreement dated July 11, 2018.

The landlord testified that the tenant had 3 cats and 1 turtle and at the end of the tenancy the carpet was in such a horrible state that it needed to be replaced. The landlord testified that there was a condition inspection report prepared at both the start and end of the tenancy but the move-out inspection report was missing. The tenant testified that while she recalls participating in a move-in inspection, no move-out inspection was done and no copy of an inspection report was ever provided by the landlord.

The landlord submits that the carpet in the rental unit was 2 years old at the time the tenancy began and needed to be wholly replaced after the tenant moved out. The landlord chose to replace the carpet with laminate flooring. The landlord submits that the cost of the replacement was \$3,500.00 and seeks a monetary award of \$2,700.00.

The landlord submitted some photographs as evidence of the condition of the carpet as well as photographs of other deficiencies they note around the rental suite.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I note that the landlord is claiming the cost of replacing the carpeting in the entirety of the rental unit with laminate flooring. The *Act* provides that a claimant may claim for losses incurred so that they may be put in the position they were in but for the intervention of the respondent. The landlord's claim is for the cost of renovations and upgrades. I find that these are not losses suffered but the cost of improvements to the suite. The tenant cannot be held responsible for the cost of upgrades.

In any event, I find that the landlord has provided insufficient evidence in support of their claim. I note that the move-in condition inspection report submitted into evidence and signed by both parties indicates that there were stains on the carpet in the suite. I find that the photographs submitted by the landlord to be insufficient to show that the rental

suite experienced damage greater than the expected wear and tear as a result of the tenant's occupancy.

I find that the landlord has not shown on a balance of probabilities that the rental unit suffered damages and loss as a result of the tenant's breach of the Act, regulations or tenancy agreement. I find that there is insufficient evidence that the suite suffered damages greater than would be reasonably expected in a tenancy. For these reasons I dismiss the landlord's application.

### Conclusion

The landlord's application is dismissed without leave to reapply.

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: November 16, 2018

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Residential Tenancy Branch