



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEACOCK HOSPITALITY GROUP INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary order for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return of their filing fee for this application?

### Background and Evidence

Both parties agreed that the tenancy began on October 1, 2016. Rent in the amount of \$1,030.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$515.00 and a pet damage deposit of \$515.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord and the Tenants agreed that the tenancy ended on July 31, 2018, in accordance with the *Act*. Both parties agreed that the move-out condition inspection report had been completed at the end of the tenancy. The Landlord submitted a copy of the inspection report into documentary evidence.

The Landlord testified that the carpets in the rental unit had been damaged during the tenancy, stating that the carpet was severely stained and that some patches smelled of cat urine. The Landlord testified that she had decided to replace the carpets in the rental unit due to this damage. The Landlord testified that the full replacement value was \$2,973.05 but that she is just seeking to retain the deposits, in the amount of \$1,030.00 to offset her costs. The Landlord submitted an invoice for the cost of the carpet replacement and 26 pictures of the carpet, at the end of the tenancy, into documentary evidence.

The Tenants testified that there were some stains on the carpet at the end of the tenancy but that the stains were light and just due to normal wear and tear. The Tenants testified that the carpet was still in good condition at the end of their tenancy and that the carpet did not need to be replaced. The Tenant also testified that they in no way damaged the carpet in the rental unit.

When asked by this arbitrator, the Landlord testified that the carpets were eight years old at the end of this tenancy.

### Analysis

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

The Landlord has requested compensation to recover \$1,030.00 of her costs for replacing the carpets in the rental unit due to damage caused by the Tenants.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16

Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if compensation is due in this case, I must first determine if the Tenants damaged the carpets in the rental unit during their tenancy. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

**Landlord and tenant obligations to repair and maintain**

**32 (3)** A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

I have reviewed the verbal testimony of the parties, and I find that the parties, in this case, offered conflicting verbal testimony regarding if the carpets had been damaged during this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the documentary evidence submitted by the Landlord, and I find that her evidence shows an ageing carpet with general signs of wear and tear. However, I find that the Landlord has not provided sufficient evidence to show that the Tenants had damaged the carpet during their tenancy.

For this reason, I dismiss the Landlord's claim for the recovery of her costs associated with replacing the carpets in the rental unit.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in her application, I decline to return the Landlords filing fee for this application.

As I have dismissed the Landlord claim, I order that the Landlord return the Tenants' security deposit to the Tenants, within 15 days of receiving this decision.

I grant the Tenants leave to apply for the return of double their security deposit if the Landlords fails to return the deposit as ordered.

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the Tenants' security deposits to the Tenants within 15 days of receiving this decision.

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: December 14, 2018

---

Residential Tenancy Branch