



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the Residential Tenancy Act (the Act) for a Monetary Order for Damage or Compensation under the Act – Security Deposit applied to claim, for a Monetary Order for Damage – Security Deposit applied to claim and for recovery of the filing fee paid for this application.

The Tenant and the Landlord were both present for the teleconference hearing.

The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party's evidence was served to the other party as required. No issues were brought up regarding service and both parties agreed they had received the other's evidence and had had time to review it and could respond.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence and make submissions.

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

### Preliminary Matters

The Landlord filed this dispute indicating that the compensation being requested should be applied against the security deposit. The Tenant presented evidence indicating that a previous dispute resolution hearing and decision contemplated the security deposit and

that an order was made for its return. I confirmed with both parties that the security deposit was ordered returned in a previous decision and therefore we were not considering any evidence or submissions regarding the security deposit. I amend the application to indicate that the security deposit is not being applied to this claim for damages and compensation and note that this decision does not in any way impact or alter the previous decision.

### Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages and/or compensation?

Is the Landlord entitled to a Monetary Order for damages?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided testimony and the Tenant confirmed that the tenancy began on April 1, 2016. Monthly rent was due on the 1<sup>st</sup> of the month in the amount of \$1450.00 and a security deposit of \$1450.00 was paid at the outset of the tenancy. Both parties agreed the tenancy ended at the end of July 2017, though the date was unclear as the Tenant testifies he moved out July 16<sup>th</sup> and the Landlord believes the tenancy ended on July 31<sup>st</sup>.

The Landlord has claimed a total of \$580.00 for damages, cleaning and repairs.

The first claim is for carpet repair in the amount of \$150.00. The Landlord stated that the carpet was only a year old when the Tenant moved in and that he had damaged the carpet to the point it needed to be repaired during the time he was in the unit. The Landlord provided several pictures of the carpet after the Tenant moved out and also provided an invoice for the carpet repair in the amount of \$150.00.

The Tenant agrees that the carpet was damaged because of a chair during the tenancy and agrees to the amount requested by the Landlord to repair it.

The Landlord has also claimed for repairs and cleaning done in the unit after the Tenant moved out and claims that there was cleaning necessary throughout the unit due to holes in the walls and various stains. The Landlord provided pictures of damage to the walls and a receipt for cleaning and repairing the walls in the unit for \$230.00.

The Tenant testified that he had the unit professionally cleaned after he moved out and provided a receipt for that cleaning in the amount of \$225.65. The Tenant states that this cleaning included the entire unit and the carpets and that the holes in the wall were minor and were not caused during the tenancy but were already there.

The Landlord has also claimed for a strata moving fee in the amount of \$200.00. The Landlord states they paid the moving fee to the strata and require reimbursement. The Landlord provided an email stating various general strata fees for the building. The Landlord also provided an addendum to the tenancy agreement noting that the Tenant was responsible for strata fees.

The Tenant claims that although he was aware that he would be responsible for strata fees as included in the addendum he was never made aware of or billed for any specific fees from the strata. He claims he booked the elevator to move out and was never notified of any specific fee that he was required to pay by either the strata or the Landlord.

### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows regarding each of the claims of the Landlord:

**Carpet repair:** The Landlord submitted that the carpet was fairly new and damaged during the course of the tenancy. The Tenant agrees that some of the damage shown in the pictures the Landlord provided was due to his furniture and agrees to the amount of \$150.00 to repair the carpet.

As the parties agree to this amount of compensation for the damage incurred I accept this amount and therefore award the Landlord \$150.00 in compensation for the repair of the damaged carpet.

**Repair and Cleaning:** The Landlord claims they spent \$230.00 to have the unit cleaned and to repairs some small holes in the walls. They provided pictures of the holes in the

walls and a receipt for repairs and cleaning in the above amount. The Tenant claims they had the unit cleaned when they moved out and provided a receipt for that cleaning. The Tenant claims that the unit was therefore reasonably clean and did not require the expense the Landlord claims to have incurred.

When parties to a dispute provide conflicting testimony regarding the events that occurred, the party with the burden of proof must provide additional evidence to establish what occurred, on a balance of probabilities.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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.

I find the Landlord has provided insufficient evidence of the value of repairing the claimed damage or that the cleaning and repair was necessary and due to a breach of the act by the Tenant. I do not see in the evidence submitted that the unit was dirty nor that there was damage to the unit justifying an expense of \$230.00. I accept the Tenant's testimony that the unit was professionally cleaned at the end of the tenancy and do not find on a balance of probabilities that the Tenant is responsible for this expense. Therefore, I decline to award the Landlord any compensation for repairs and cleaning.

**Strata moving fee:** The Landlord testified that they had to pay a strata move out fee for the Tenant after his tenancy ended. The Landlord provided an email stating what various general strata fees for the building the unit is located in charges. This email notes that the strata move out fee is \$200.00. The Landlord also stated and provided evidence showing that the Tenant was aware they were responsible for strata fees applied to them.

The Tenant testified that he was not billed for any strata fees and was not aware he was charged them nor was he aware that the Landlord paid them.

I find that the Landlord provided insufficient evidence that the strata applied a \$200.00 move out fee to the Tenant nor that the Landlord paid that fee to the strata for the Tenant's move out. I am not able to confirm from the evidence provided that the Tenant failed to comply with the tenancy agreement. I am also not able to confirm that the Landlord actually incurred an expense as a result of the Tenant failing to comply with the Act or tenancy agreement. Therefore, I decline to award the Landlord any compensation for the strata moving fee.

As the Landlord was partially successful in their claim, I award partial recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$50.00, pursuant to Section 72 of the Act.

The Landlord is awarded a Monetary Order in the amount outlined below:

Carpet repair	\$150.00
Repair and Cleaning	\$0
Strata moving fee	\$0
Filing fee	\$50.00
<b>Total owing to Landlord</b>	<b>\$200.00</b>

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the Act and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d).

### Conclusion

Pursuant to Sections 67 and 72 of the Act, I grant the Landlord a **Monetary Order** in the amount of **\$200.00** as compensation as outlined above. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: January 21, 2019

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Residential Tenancy Branch