



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNUL –S, MNDL –S, FFL, MNSD, FFT

### Introduction

This proceeding dealt with monetary cross applications filed by the parties on February 12, 2019 and February 14, 2019. The landlord applied for a Monetary Order for unpaid utilities and for compensation for carpet replacement. The tenant applied for return of his security deposit and pet damage deposit.

The hearing initially convened on May 31, 2019 and on that date the landlord was represented by an agent only. The tenant appeared on his own behalf. At the outset of the hearing, I explored service and receipt of hearing documents and evidence with the parties at length and after determining what was served and received I limited the landlord's claims to two matters (one utility bill and carpet replacement), I issued orders to the parties, and I adjourned the hearing. An Interim Decision was issued and sent to the parties along with a Notice of Dispute Resolution Proceeding by way of email to the tenant and email to the landlord's agent at the request of the parties.

The hearing reconvened on July 16, 2019. The landlord appeared and was accompanied by two lawyers but not the agent that appeared on May 31, 2019. The landlord was non-specific as to the documents he received from his agent but appeared to indicate he received the Notice of Dispute Resolution Proceeding but not my Interim Decision. It was apparent that the landlord's lawyers were unfamiliar with my Interim Decision and with a view to fairness I read from portions and summarized other portions of the Interim Decision so that they may appreciate what was already determined and the reasons for such.

As seen in the Interim Decision, I had authorized and ordered the landlord to submit and serve evidence pertaining to the proof of payment with respect to carpet replacement only during the period of adjournment. The landlord testified that the tenant was provided the evidence by registered mail sent on June 19, 2019. The tenant confirmed

receipt of documents from the landlord sent on or about June 19, 2019. However, I noted that the documentation uploaded for my review included additional documents not limited to proof of carpet replacement and a Monetary Order worksheet dated June 28, 2019. I informed the parties that I would only admit and consider three receipts and invoices that may, at first blush, be related to carpet replacement. The tenant confirmed he received these three receipts and invoices.

The landlord indicated that he wanted to me consider allowing additional utility bills and other costs related to damage. I declined to amend the landlord's application at the reconvened hearing as I had already spent a considerable amount of time at the first hearing date exploring the landlord's claim, including a lack of a detailed monetary calculation, and service of documents upon the tenant. However, I gave the landlord the option of withdrawing his claims, without prejudice, but with a caution that I would dispose of the security deposit and pet damage deposit with this decision since the time for making a claim against the deposits has since expired. The landlord conferred with his legal counsel and a decision was made to proceed with the two claims I had indicated I would consider at the May 31, 2019 hearing: the one utility bill in the amount of \$495.48 and carpet replacement.

I also confirmed that tenant sent his hearing package and evidence to the landlord's agent as ordered. Initially, the landlord indicated that he did not receive the tenant's Application for Dispute Resolution from his agent and I read the details of dispute that the tenant had written on his Application. Subsequently, the landlord confirmed that he did have the tenant's Application for Dispute Resolution before him.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for a utility bill and carpet replacement and, if so, what are the landlord's losses for which the tenant is responsible?
2. Is the tenant entitled to return of the security deposit and pet damage deposit, or part thereof?

#### Background and Evidence

The tenancy started on January 1, 2018 and the tenant paid a security deposit of \$1,750.00 and a pet damage deposit of \$1,750.00. The tenant was required to pay rent of \$3,500.00 on the first day of every month. The tenancy ended and the tenant vacated the rental unit on January 31, 2019.

A move-in inspection report was completed and signed by both parties. A move-out inspection was prepared and signed by the parties on February 6, 2019. The tenant did not authorize any deductions from the deposits in writing and the tenant provided his forwarding address on the condition inspection report prepared on February 6, 2019. The landlord filed an Application for Dispute Resolution on February 12, 2019 and continues to hold the tenant's deposits pending the outcome of this proceeding. The tenant filed an Application for Dispute Resolution on February 14, 2019 seeking return of the security deposit and pet damage deposit.

### ***Landlord's application***

Below I have summarized the landlord's claims against the tenant and the tenant's deposits and the tenant's responses.

#### **Unpaid utility bill**

The landlord submitted that the tenant was required to pay for all utilities for the rental unit. The tenant did not pay the utility bill for the period of October 1 – December 31, 2018 that was received from the City for water, sewer and garbage services in the amount of \$495.48. The landlord sent an image of the bill to the tenant. The bill was due by February 28, 2019.

The tenant acknowledged that he had received a copy of the utility bill described above via text message from the landlord and that he did not pay it because he could not afford to pay it without return of the security deposit. The tenant acknowledged that he owes the amount claimed.

#### **Carpet damage**

The landlord submitted that the tenant's dogs urinated and soiled the carpeting in the rental unit. The landlord submitted that the rental unit smelled horribly, like sewer, when he was showing the rental unit to prospective buyers and he had a carpet technician attend the property. The landlord determined that the smell could not be effectively removed by merely cleaning the carpet as the urine had soaked through to the underlay and parquet flooring below. As a result, the landlord had obtained two quotes from the same person for replacement of the carpeting in filing the landlord's claim. One quote was for new carpeting in the amount of \$7,944.06 and the other was for new laminate at a cost of \$7,998.23.

As I ordered the landlord to provide proof of carpet replacement, the landlord submitted that he purchased the materials for new laminate from a home improvement store and had the laminate installed by a contractor. The contractor also removed the old carpet and installed baseboard.

The landlord stated that there was parquet flooring beneath the carpet that was damaged as a result of the urine and that he decided not to replace it with parquet because it was too expensive so he much less costly laminate flooring.

The landlord produced two receipts from a home improvement store. The first receipt indicates the landlord purchased a variety of materials on February 14, 2019 in the sum of \$150.76. The landlord described the materials purchased on February 14, 2019 as being the materials he was told to purchase by the laminate flooring installer although the landlord could not recall what the materials where exactly except to say a knife was used to cut the laminate. The second receipt indicates the landlord purchased something ordered from "Special Services" on February 21, 2019 at a cost of \$1,689.86. The landlord submitted that the second receipt is for the purchase of the laminate boards and some type of material that goes underneath, although he did not know what the material was.

The landlord submitted an invoice from contractor dated February 28, 2019 in the sum of \$1,592.28. The invoice indicates the contractor removed and disposed of the old carpet, installed new laminate, supplied and installed new baseboards for the amount invoiced, and painted "at no extra cost".

In addition to the amounts indicated on the receipts and invoice, the landlord requested \$3,000.00 as compensation for his labour and the labour provided by his friends to do "everything" else that needed repair in the rental unit overall a number of days. The landlord indicated that "everything" included wall repair, repainting and helping the flooring installers.

The tenant was not agreeable to compensating the landlord for any of the items claimed even though he admitted that his dogs urinated in the rental unit. The tenant was of the position that all that was needed was cleaning of the carpeting. The tenant testified that he had the carpeting cleaned in July 2018 and the stains were removed. The tenant acknowledged that he did not have the carpet cleaned at the end of the tenancy.

The tenant submitted that the carpeting was old, approximately 20 to 25 years, and he suspects previous occupants had pets as his dogs went to urinate in very specific corners in the rental unit and the rental unit was rented as being pet friendly. The tenant submitted that it is likely the parquet floor under the carpet was already damaged since it was covered up with carpet.

The tenant pointed out that the receipt dated February 14, 2019 appears to be for painting supplies and not related to carpet replacement. Also, the receipt for February 21, 2019 does not specify what was purchased. As for the contractor's invoice of February 28, 2019 the tenant submitted that it included items and activity not related to carpet replacement, including baseboards installation and painting.

As for the landlord's request for an additional \$3,000.00 for labour, the tenant pointed out the amount is not substantiated and appears to be an attempt to bring up the landlord's claim up since the estimate that was originally supplied was for over \$7,900.00.

The landlord denied trying to inflate the claim and explained that he replaced the upper floor carpeting only and had the basement carpeting cleaned. The landlord submitted that the carpeting was approximately 5 years old. The landlord acknowledged he purchased the property approximately 2 years ago and estimated the carpet's age based on its appearance.

The tenant was of the position the landlord cannot determine the age of the carpeting and this it was much older than 5 years.

### ***Tenant's application***

The tenant submitted that he provided a forwarding address by way of a text message on February 1, 2019 and again on the condition inspection report prepared on February 6, 2019. The landlord confirmed this to be accurate.

The tenant submitted that he filed his application because the landlord indicated that he would not be refunding the deposits and the tenant did not agree that he damaged the rental unit.

### Analysis

Upon consideration of the evidence that has been admitted, I provide the following findings and reasons with respect to each of the applications before me.

#### ***Tenant's application***

As for the tenant's application for return of the security deposit and pet damage deposit, I find the tenant's application was pre-mature. Under section 38(1) of the Act, a landlord has 15 days after receiving the tenant's forwarding address, or the date the tenancy ended, whichever date is later, to return the deposit, get the tenant's written consent to retain or make deductions from the deposit, or make an Application for Dispute Resolution seeking to retain or make deductions from the deposit. The landlord filed an Application for Dispute Resolution seeking authorization to retain the deposits within 15 days of receiving the tenant's forwarding address and disposition of the deposits were set to be determined under the landlord's application. Accordingly, I find the tenant's application was unnecessary and it is dismissed without leave since I will dispose of the deposits under the landlord's application.

#### ***Landlord's application***

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.

#### **Unpaid utility bill**

It was undisputed that the tenant was liable to pay for all utilities for the rental unit during the tenancy. The tenant acknowledged responsibility to pay the utility bill for the

period of October 1, 2018 through December 31, 2018 in the amount of \$495.48 and I award that amount to the landlord.

### **Carpet replacement**

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 21 of the Residential Tenancy Regulations provides the following with respect to the evidentiary weight of condition inspection report.

#### **Evidentiary weight of a condition inspection report**

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move-in inspection report presented to me was signed by both parties and the tenant indicated on the report that he agreed with the landlord's assessment of the property. The move-out inspection report presented to me was also signed by the parties and the tenant indicates he agrees with the landlord's assessment of the condition of the rental unit as of February 6, 2019. The landlord also provided photographs of the carpeting and submitted as evidence in February 2019 that appears to demonstrate staining consistent with pet urination. Accordingly, I find the move-in and move-out inspection reports are the best evidence as to the condition of the rental unit at the beginning and end of the tenancy.

The move-in inspection report indicates the carpeting was in good condition at the start of the tenancy as denoted by the check marks that appears on the report. However, the tenant testified that the carpeting was old whereas the landlord testified that it was approximately five years old based on its appearance. Upon review of the photographs submitted as evidence by the landlord in February 2019 I am of the view that the

carpeting was in good condition and newer than the 20 – 25 years that the tenant suggested. I am inclined to accept that the carpeting is closer in age to the landlord's suggestion of five years.

The move-out inspection report reflects the carpeting was soiled by dog waste and smelled of dog waste. The tenant also acknowledged that the carpeting was soiled by dog waste at the end of the tenancy but was of the position the waste and smell could be rectified by cleaning the carpet. The landlord submitted that cleaning the carpet surface is insufficient since the urine soaked through to the materials below the carpet. Upon review of the photographs submitted as evidence by the landlord in February 2019 I see evidence of heavy staining and what appears to be repeated urination in certain areas and I accept that repeated urination in an area would likely result in the saturation of the carpeting and penetration to the materials below the carpet. As such, I accept that merely cleaning the surface of the carpet is not likely effective and that a reasonable solution is to remove and replace the carpeting and underlay. Accordingly, I turn my mind to analyzing the losses incurred by the landlord to do so.

The receipt dated February 21, 2019 does not specify the purchase of laminate; however, I accept that it is likely the purchase of laminate given the amount and timing of the purchase compared to the invoice for its installation. The landlord provided an invoice dated February 28, 2019 to demonstrate a contractor removed the carpeting and installed laminate flooring. Therefore, I accept the receipt dated February 21, 2019 represents the cost to purchase laminate flooring to replace the urine soaked carpeting.

With respect to the receipt dated February 14, 2019 I find I am not persuaded that it is for laminate flooring installation. As pointed out by the tenant, the materials appear more consistent with painting supplies. The receipt indicates the purchase of painting tape, painting trays, extension poles, and gallons of an unspecified material that could be paint. I also find it questionable that the landlord would purchase various materials for laminate installation before he has even purchased the laminate boards. Therefore, I reject the February 14, 2019 receipt as being a cost pertaining to carpet replacement or laminate installation.

As for the contractor's invoice dated February 28, 2019 I find some of the charges pertain to carpet replacement while others do not. For instance, the landlord's photographs that were submitted in February 2019 show that some portions of the walls did not have baseboard when the carpeting was in place. As such, I do not hold the tenant responsible for purchasing, delivering and installing new baseboard. Therefore, I

shall only consider the charges related to removal of the old carpeting and installation of laminate.

I have rejected the landlord's request for \$3,000.00 for his labour and the labour of his friends for several reasons, including:

- the claim lacked veracity and corroboration;
- the claim represented time doing many things other than that related to carpet replacement according to the landlord's own submission; and,
- the contractor's invoice for carpet removal and laminate installation made no mention of the landlord or anybody else supplying labour.

Also of consideration is that monetary awards are intended to be restorative, so I have also considered wear and tear and deterioration in determining the landlord's losses. Residential Tenancy Branch policy guideline 40 provides that carpeting has an average useful life of 10 years. According to the landlord the carpeting was approximately five years old, which I have accepted, and I find it appropriate to take into account that the carpet's remaining useful life was approximately 5 years had it not been for the tenant's actions or neglect. Therefore, I award the landlord 50% of the cost to remove the old carpeting and install new laminate flooring which I calculate as follows:

Laminate materials, per receipt of February 21, 2019:		\$1,689.86
Labour and delivery per Invoice dated February 28, 2019:		
Carpet removal and laminate installation	\$1,000.00	
Carpet disposal	40.00	
Laminate delivery	70.00	
Tax on \$1,110.00 at 5%	<u>55.50</u>	<u>\$1,165.50</u>
Total cost to remove carpet and install laminate		\$2,855.36
Tenant's liability		<u>x 50.0%</u>
Award to landlord for carpet replacement		\$1,427.68

### **Filing fee, security deposit and Monetary Order**

The landlord's claim had merit and I further award the landlord recovery of the \$100.00 filing fee paid for the landlord's application.

In keeping with all of my findings above, I authorize the landlord to make the following deductions from the tenant's security deposit and pet damage deposit and I order the balance of the deposits to be refunded to the tenant without delay, as calculated below:

Deposits paid by tenant		\$3,500.00
Less: authorized deductions for –		
Utility bill	\$ 495.48	
Carpet damage	1,427.68	
Filing fee	<u>100.00</u>	<u>(2,023.16)</u>
Balance of deposits owed to tenant		\$1,476.84

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$1,476.84 to ensure the landlord returns the balance of the deposits to the tenant as so ordered without delay.

### Conclusion

The tenant's application was premature and dismissed. The security deposit and pet damage deposit has been disposed of under the landlord's application.

The landlord has been authorized to deduct \$2,023.16 from the tenant's deposits and has been ordered to return the balance of the deposits to the tenant in the amount of \$1,476.84 without delay. The tenant is provided a Monetary Order in the amount of \$1,476.84 to ensure payment is made.

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 17, 2019

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Residential Tenancy Branch