



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on April 1, 2019 and ended on March 30, 2020. Rent of \$1,475.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$737.50 as a security deposit. The Tenants provided and the Landlord received the Tenants' forwarding address on March 29, 2020. At the outset of the tenancy the Parties mutually conducted a move-in inspection with an inspection report completed and copied to the Tenants.

The Parties agree that at the end of the tenancy the Parties mutually completed a move-out inspection with an inspection report completed however the Landlord has no evidence that a copy of that report was provided to the Tenants prior to the service of its application. The Tenant states that it did not receive a copy of the move-out inspection report until it was received with the Landlord's application materials on April 24, 2020. The Tenant states that prior to receiving the Landlord's application it received no information at all from the Landlord after the end of the tenancy and that their security deposit was not returned.

The Landlord claims \$4,032.00 as costs to replace the carpet. The Landlord confirms that the move-in inspection notes that the carpets were stained at move-in. The Landlord states that it has no evidence that the Tenants caused greater damage than was already existing. The Landlord has no evidence of the age of the carpet. The Tenant states that no stains were caused by the Tenants during their tenancy.

### Analysis

Section 36(2)(c) of the Act provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18(1)(b) of the Regulations provides that the landlord must give the tenant a copy of the signed - condition inspection report of a move-out inspection promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

Given the undisputed evidence that the move-out inspection and the provision of the forwarding address both occurred on March 29, 2020, I find that the Landlord was required to give the Tenants a copy of the move-out inspection report no later than April 13, 2020. Based on the undisputed evidence that the Landlord sent the move-out

inspection report to the Tenants on April 24, 2020 I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. Given that the Landlord's right to claim against the security deposit was extinguished the Landlord's only option was to return the security deposit within 15 days of receipt of the forwarding address and end of tenancy. The Landlord could still make an application to claim for damages to the unit however the security deposit was to have been returned. Based on the undisputed evidence that the Landlord did not return the security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,475.00**. The Landlord's claim to retain the security deposit is dismissed.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 21 of the Regulations provides that 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. Given the undisputed evidence that the carpet was noted in the move-in inspection report to be stained and as there is no evidence that the Tenants thereafter caused the carpet to be stained, I find that the

Landlord has not substantiated that the Tenants damaged the carpet. I dismiss the claim for carpet replacement costs. As the Landlord's claim has not been successful, I dismiss the claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,475.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 19, 2020

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Residential Tenancy Branch