



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on August 15, 2019. Rent in the amount of \$3,500.00 was payable on the first of each month. The tenant paid a security deposit of \$1,750.00. The tenancy ended on June 15, 2020.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

The landlords claim as follows:

a.	Carpet cleaning	\$399.00
b.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$499.00</b>

The landlord testified that as a term of the tenancy agreement which states, “after the Tenant vacates the premise, carpet and sofa upholstery cleaning will be arranged by the Landlord at the Tenant’s expense”.

The landlord testified that the tenant had the carpets and upholstery cleaned, contrary to the tenancy agreement and that the carpets were left overly wet and had a musty smell because they were wet to long.

The landlord testified that because of that, they had to have the carpets recleaned with an anti-mildew. The landlord stated that this treatment was taken on the advice of the carpet service technician. Filed in evidence is a receipt.

The landlord testified that the move-out condition inspection report shows in the damage section that the carpets needed to be cleaned.

File in evidence of the landlord is a statement of DG, which reads.

“During the move out walk-through on June 15<sup>th</sup>, I noticed the carpets were still quite damp. This varied from room to room, but I did have wet feet by the end of the walk-through. The carpet cleaning technician and I both notice a musty odor emanating from the carpet and it was determined that the carpets were wet to long...”

[Reproduced as written]

The landlord further argued that the receipt the tenant has filed in evidence is a quote.

The tenant testified that they believe the term of the tenancy agreement is unconscionable because it is the tenant’s responsibility to clean the carpets and because this was a tenancy of less than 12 months is contrary to the Residential Tenancy Policy Guideline #1.

The tenant testified that they informed the property manager DG that they were having the carpets professionally cleaned, which they had done on June 14, 2020. However, the property manager would not cancel the company that they had booked, which is a failure to mitigate.

The tenant testified that the move-out condition inspection took 5 hours and 45 minutes show the carpets were left in a good condition. The tenant stated the property manager [DG] had prefilled in the section of damages in the report that the carpets need to be cleaned, which was not agreed to and inconsistent with the report.

The tenant testified that the carpets were not wet, nor was there any musty smell and at no time during the inspection was this issue raised.

Filed in evidence of the tenant is a statement for VS, which reads in part,

“I am a professional house keeper. I have been cleaning the whole house at ... ever week since early. I have typically spent 4-5 hours in the house every single week and know every square inch of it.

....

One reason I am shocked by all this is because I finished off a full clean of the house that same day, Monday 15<sup>th</sup>, at 12:20pm, ...and there was no musty, unpleasant, or mouldy odour in the house at all (except for the washing machine as noted below). The house just smelled clean ....

I couldn't have done my 5+hours of cleaning if all the carpets were wet because there are so many hard wood floors in the house, and it would have been really slippery and dangerous. It wasn't. I just do not understand her [DG] statements because they are either untrue or make no sense. ...”

[Reproduced as written]

Filed in evidence for the tenant is a witness statement of GW, which reads in part.

“Whoever wrote this document has lied. The house smelled beautifully clean and not “musty” at all, at 12:30pm when DG and two men turned up at our door...The carpets cannot possibly be said to have been “wet for too long” because they weren't “wet” even right after the professional clean the day before. This is another lie. I walked around that house for an hour with them ... and my feet weren't wet ...”

[Reproduced as written.]

Filed in the evidence of the tenant's are photographs of the carpets, which show the carpets were professionally cleaned and a receipt.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Section 21 of the Residential Tenancy Regulations, Evidentiary weight of a condition inspection report, states a condition inspection report completed in accordance with this section **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-out condition inspection report shows that the carpets were in good condition at the end of the tenancy. This is listed as “good” in multiple section of the report. While I accept at the end of the report in the damages section, it states the carpets need to be cleaned; however, that is contradictory to the listed items in the report. No details were provided why the carpets needed to be cleaned, such as overly wet or a musty smell. I accept the tenant’s testimony that this was prefilled in by the property manager and more likely than not was added because there was a dispute over who is responsible to clean the carpets and upholstery. I find it is unreasonable if the carpets and upholstery were wet and had a musty smell and this was an issue during the inspection that it would not be written in the report.

While I accept the property manager provided at statement, the property manager had the opportunity to provide that information in the move-out condition inspection report. Further, the tenant’s witness statement of VS and GW, are very detailed and have the “ring of truth” that the carpets were clean, not wet and there was no musty smell. The photographs provided by the tenant also support the carpet were cleaned and they do not appear to look overly wet.

I further do not accept the landlord’s testimony that the tenant’s receipt is merely a quote. I accept on the invoice there is an email address for a quote; however, that does not prove anything. Clearly the carpets were cleaned, and the receipt is filled out and indicates it was paid in cash.

I further refer to the landlord’s receipt. There are no notes on the receipt from the carpet technician, nor was there a witness statement provided to support the landlords’ claim. I am also not satisfied that the receipt is accurate as it is dated June 14, 2020. This predates the move-out condition inspection, which was held on June 15, 2020 and it would have been impossible for the landlord to have the carpets and upholstery cleaned on the date stated in the invoice. This leads me to question the validity of the receipt.

Based on the above, I find the landlords have not provided a preponderance of evidence to the contrary as required by section 21 of the Regulations, that the move-out condition report was wrong. I find the landlords have not met the burden of proof that the carpets and upholstery were left damaged. Therefore, I dismiss the landlords’ claim. As the landlords were not successful, I find the landlords are not entitled to recover the cost of the filing fee.

As the landlords have no further right to retain the balance of the tenant's security deposit of \$399.00, I order the landlords to return this amount forthwith to the tenant. I grant the tenant an order under section 67 of the Act for the balance due of their security deposit in the amount of **\$399.00** should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

### Conclusion

The landlords' application is dismissed. The tenant is granted a monetary order for the balance due of their security deposit.

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: October 19, 2020

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Residential Tenancy Branch