



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: **MNDCL-S, FFL MNDCT, MNSD, FFT**

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order monetary loss or other money owe;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order monetary loss or other money owed;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, 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

Is the landlord entitled to monetary compensation for loss or other money owed?  
 Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?  
 Is the tenant entitled to a monetary compensation for loss or other money owed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2015. Current rent in the amount of \$999.00 was payable on the first of each month. The tenant paid a security deposit of \$440.00. The tenancy ended on or about February 28, 2022. The parties agreed that the landlord did return to the tenant a portion of their security deposit in the amount of \$292.25., which the tenant did not cash that cheque.

The landlord claims as follows:

a.	Carpet cleaning	\$99.75
b.	Cleaning	\$48.00
c.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$247.75</b>

The landlord's agent testified that the tenant did not have the carpets shampooed at the end of the tenancy as required, and they paid to have them cleaned. The landlord seeks to recover the cost of \$99.75.

The landlord's agent testified that they had to do additional cleaning to the oven and the toilet. The landlord seeks to recover the cost of cleaning in the amount of \$48.00.

The tenant's agent testified that when the tenant moved into the rental unit the carpet was not up to standard and dirty. The agent stated that the carpet based on the useful life span of 10 years should have been replaced. The agent stated on February 3, 2022, they sent an email to the landlord that the carpets were cleaned during the tenancy; however, they did not think it was fair to have them cleaned at the end of the tenancy because there was a recent outbreak of mice, and the carpets should be replaced.

The tenant's agent testified that the rental unit was left cleaned by the tenant. Filed in evidence are photographs.

Tenant's application

The tenant claims as follows:

a.	Return of rent at new living accommodations	\$ 925.00
b.	Return of security deposit	\$ 440.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,465.00</b>

#### Return of rent

The tenant's agent testified that the tenant ended their tenancy in accordance with the Act. However, they are seeking to recover \$925.00 they paid to their new landlord, under their new tenancy agreement as that tenancy commenced on February 15, 2022, and they paid rent in two locations as they had to leave due to the infestation of mice and the landlord was not doing anything.

The landlord's agent testified that they have the pest control attend monthly. The agent stated it the tenant's choice to vacate, and they gave proper notice to end their tenancy under the Act.

#### Security deposit

The tenant's agent testified that the tenant attended for the moveout condition inspection; however, the tenant was not in agreement with the landlord as a result the report was not completed when they left. The agent stated they took a photograph of the partial completed report. However, after they left the landlord completed the report. The agent argued the landlord was not entitled to make changes to the report.

#### 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, both parties have the burden of proof to prove their respective 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.

### Landlord's application

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.

### Carpet cleaning

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

While I accept the tenant did periodic cleaning of the carpets during the tenancy; however, as their tenancy was approximately seven years they were required to clean the carpets at the end of the tenancy. There is no requirement for the landlord to replace the carpet if they are nearing or over the age of 10 years, if the landlord determines they are in a reasonable condition. Policy Guideline 40 the useful life span of a building element is only to be used when the item is damaged by a tenant and replaced by the landlord to calculate the depreciated value owed by the tenant, as it would be unfair for the tenant to pay for the full cost of a new carpet.

Further, I do not accept the tenant's agent testimony that the carpets were dirty when the tenant moved into the premises. The move-in condition inspection shows they were cleaned, except for a stain in the living room. The tenants alleged it was not fair to clean the carpets because of a mouse infestation; however, I find that unreasonable because the tenant's own photographs show that even if there was an infestation, although none was proven, it did not stop them from cleaning the entire rental unit, which included vacuuming the carpets. I find the tenant breached the Act when they failed to shampoo the carpets at the end of their tenancy. Therefore, I find the landlord is entitled to recover the reasonable cost of carpet cleaning in the amount of **\$99.75**.

I do not accept the landlord's agent submission on cleaning. The tenant provided photographs showing the oven and the toilet and they show these fixtures were left reasonably clean as required by the Act. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$199.75** comprised of the above-described amount and the \$100.00 fee paid for this application.

#### Tenant's application

#### Return Rent

In this case, the tenant ended their tenancy in accordance with the Act by giving the landlord at least 30 days notice. I find simply because the tenant found a different living accommodation and chose to enter into a new tenancy on or about January 12, 2022, which commenced on February 15, 2022,. This is an earlier date before their tenancy with the landlord was to end on February 28, 2022, which I find was a personal choice. At no time is the landlord responsible to pay the rent for the tenant's new living accommodations.

At most, if the tenant truly believed the landlord was in breach of a material term of the tenancy by not performing pest control, they have two options.

The first option would be to file an application for dispute resolution and request an order that the landlord provide those service, the onus would be on the tenant to prove a violation of the Act, such as providing proof of an infestation such as photographs and if proven the tenant may have been entitled to a rent reduction of their own rent payable to the landlord.

The second option would be to end the tenancy for failure to comply with a material term of the tenancy agreement under section 45(3) of the Act. However, to be able to exercise this right the tenant must inform the other party in writing. that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.

Based on the above, I dismiss this portion of the tenant's claim.

### Security Deposit

I do not accept the tenant's written submission that the landlord refused to conduct a move out inspection that is not true. Both parties met at the rental unit to conduct the required moveout inspection. At the inspection the tenant disagreed with the landlord, which is their right; however, the tenant must remain and allow the inspection to continue, even when in disagreement and sign the report. The report has a section for the tenant to state why they disagree with the report. The landlord was entitled complete the moveout inspection report in the absence of the tenant. It appears that the tenant may have extinguished their rights under the Act; however, that was not what the landlord was claiming, which I find reasonable.

As I have granted the landlord a monetary order, I order that the landlord to retain the amount of **\$199.25** from the security deposit of **\$440.00** in full satisfaction of the claim. This leaves a balance due to the tenant in the amount of **\$240.25**.

I have not granted the tenant the cost of their filing fee because they were not successful with their claim for return of rent and there was no requirement for the tenant to apply for the return of their security deposit as the landlord had already made their application claiming against the security deposit. Any balance due would have been automatically ordered to be returned to the tenant.

The landlord has provided the tenant a cheque dated March 7, 2022, in the amount of \$292.25; however, the tenant did not cash the cheque which is now over six months old and is likely stale dated.

I note the amount the landlord has returned to the tenant is higher than the amount I have ordered returned to the tenant because the landlord is entitled to recover the cost of the filing fee, which was not considered when they gave the tenant the cheque.

Therefore, I find it appropriate to make the following orders to ensure the tenant does not receive more than they are entitled to, should the March 7, 2022, cheque be cashed and receives only the amount owed.

**I Order the tenant** to return the cheque dated March 7, 2022, in the amount of \$292.25 to the landlord forthwith.

**I Order the landlord** once the above cheque is received that they are to issue the tenant a new cheque in the amount of \$240.25. Should the landlord fail to pay the tenant after they have received the returned cheque from the tenant. This monetary order granted to the tenant may be filed in the Provincial Court (Small claims) and enforce as an order of the court, but the onus will be on the tenant to prove the March 7, 2022, cheque was returned. I would suggest to the tenant to return the cheque to the landlord in person or by registered mail to ensure there is a record of service..

### Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenant must return the previous cheque issued by the landlord and once received by the landlord, the landlord must issue the tenant a new cheque in the amount of \$240.25..

The tenant's application is dismissed without leave to reapply.



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: November 15, 2022

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Residential Tenancy Branch