



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, retention of all or part of the security deposit and recovery of the filing fee. The tenants did not appear at the hearing; however, a written submission had been received by the Residential Tenancy Branch on behalf of the tenants. The landlord testified that she had sent each of the tenants the hearing documents by registered mail to the forwarding address provided to her by the tenants. I was satisfied the landlord served the tenants with the hearing documents and proceeded to hear from the landlord without the tenants present.

As the landlord confirmed that she received the written submission of the tenants and was provided an opportunity to respond to it during the hearing, I have accepted the tenants' written submission and have considered it in making my decision.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to monetary compensation for damages, and if so, the amount?
2. The amount of the security deposit to be retained or returned.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the landlord and the evidence before me, I make the following findings. The tenancy began December 13, 2008 and the tenants vacated the rental unit July 30, 2009. The tenants had paid a \$750.00 security deposit and although the tenants had pets, the tenants were not required to pay a pet deposit. Rather, the parties agreed in writing that in lieu of paying a pet deposit the tenants would clean the carpets and repair any damage caused by the tenants' dogs before vacating the premises.

On July 30, 2009 the landlord provided the tenants a notepad to provide their forwarding address to the landlord which they did. On August 14, 2009 the landlord sent the tenants a cheque for a partial refund of their security deposit by registered mail. The landlord calculated the refund as follows:

Security deposit	\$ 750.00
Interest on security deposit	1.97
Less: carpet cleaning	( 194.25)
Less: damage to driveway	( <u>300.00</u> )
Refund paid to tenants	\$ 257.72

On August 14, 2009 the landlord made an Application for Dispute Resolution to retain \$494.25 of the tenant's security deposit.

As evidence for the hearing, the landlord provided a copy of the carpet cleaning invoice, an estimate for the driveway repair, the tenancy agreement and photographs of the property, including the driveway. The photographs of the driveway depict an older driveway with numerous cracks, an oil stain and a depression that appears to be caused by a vehicle tire. The landlord acknowledged that no condition inspection reports were prepared by the landlord.

Upon enquiry, the landlord testified that the house is approximately 50 years old and that the driveway has not been replaced or repaired since the landlord began taking care of the property in 1998; however, the driveway has been regularly re-sealed.

The landlord provided evidence that the moving truck used by the tenants was a truck large enough to handle a three bedroom house, plus a car transporter. The landlord provided a written statement from a contractor who stated he had parked his truck on the driveway during renovations and that the driveway was not affected by his vehicle being parked on the driveway. Upon enquiry, the landlord stated the rental unit was a three bedroom house. The landlord also described how the temperature was approximately 39 degrees on the day the tenants vacated.

In the tenants' written submission, the tenants expressed that they did not feel obligated to pay for carpet cleaning as their dogs were not permitted upstairs, where the carpets are located. The tenants also submitted that the father of one of the tenant had attended the property to view the driveway damage and reported back to the tenants that he could not find signs of recent damage.

Finally, the landlord submitted that she had performed other repairs and cleaning tasks that she did not charge to the tenants and that the tenants left behind a knife set that the landlord is willing to return to the tenants at the tenants' cost.

### Analysis

As explained to the landlord, I cannot make awards for amounts not claimed; therefore, in this decision I do not made any findings with respect to damages or cleaning performed by the landlord that was not included in the landlord's monetary claim. I also leave it up to the parties to address return of the tenant's possessions. The landlord is

informed that abandoned possessions worth less than a total amount of \$500.00 may be disposed of at any time by the landlord.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

Upon review of the agreement signed by the parties, I find it to be a term of the tenancy that the tenants clean the carpets upon vacating in recognition of having been permitted pets on the property. I have also considered that Residential Tenancy Policy Guideline 1 also provides that tenants are ordinarily held responsible for carpet cleaning costs where the tenants had pets or smoked in the rental unit. Although the tenants claim they did not permit the dogs upstairs, I do not find the parties agreed to waive the carpet cleaning requirement as provided in the addition terms of tenancy. Therefore, I find the tenants are obligated to pay for carpet cleaning costs and I award the landlord the \$194.25 claimed for such costs.

Upon review of the photographs of the condition of the driveway and upon hearing testimony of the landlord, I find it very likely the driveway quite old, at least 15 years old, and that evidence of the significant cracking indicates an underlying problem with the driveway. Accordingly, I find that the driveway is likely in need of significant repairs or replacement even if the driveway were not depressed by the tires of a moving truck. Residential Tenancy Policy Guideline 37 provides for normal useful life of asphalt driveways to be 15 years. Therefore, I find the driveway is at or past its normal useful life and its depreciated value is approximately nil.

I have also considered that the rental unit is a three bedroom house and that the tenants rented a moving truck capable of holding contents of a three bedroom house. It is reasonable to expect that tenants renting this property would be using a large moving truck and if the driveway is incapable of holding the weight of such a vehicle the

landlord would have to advise the tenants of such limitations. In the future, the landlord may wish to inform tenants to not park moving trucks on the driveway to mitigate future damage or make the necessary repairs or replacement to the driveway.

In light of the above findings, I award the carpet cleaning costs to the landlord and I deny the landlord's request for driveway repairs. I also award the landlord one-half of the filing fee. Accordingly, I order the landlord to immediately refund to the tenants \$275.00 which represents \$300.00 deducted from the security deposit by the landlord for the driveway, less \$25.00 for one-half of the filing fee.

To ensure payment, the tenants have been provided a Monetary Order in the amount of \$275.00 to serve upon the landlord. The Monetary Order may also be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord was partially successful in this application and has established an entitlement to carpet cleaning costs and one-half of the filing fee. In recognition of the partial refund already paid to the tenants, the landlord is ordered to repay a further \$275.00 to the tenants forthwith. A Monetary Order has been provided to the tenants in the amount of \$275.00 to serve upon the landlord and enforce in Provincial Court (Small Claims) if necessary.

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: December 18, 2009.

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Dispute Resolution Officer