



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, (MND), FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in payment of those amounts.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenants' security deposit and pet damage deposit?

### Background and Evidence

This tenancy started on March 1, 2009 and ended on March 31, 2010 when the Tenants moved out pursuant to a 2 Month Notice to End Tenancy for Landlords' Use of Property. Rent was \$1,350.00 per month. The Tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report at the beginning of the tenancy. The Landlord scheduled 2 appointments with the Tenants to conduct the move out inspection but they could not attend at those times. The Landlord admitted that she did not give the Tenants a Notice of Final Opportunity to Schedule a Condition Inspection. The Landlord completed the move out inspection report without the Tenants on April 7, 2010.

The Landlord said that the owner of the rental property planned to make renovations to the rental property which included replacing the carpets in the upper portion of the property because they were approximately 15 years old and in poor condition. The Landlord said, however, that the property owner had considered not replacing the carpets in the lower part of the rental property because they were newer, however she did not know how old they were. The Landlord said the carpets downstairs were in good condition at the beginning of the tenancy but at the end of the tenancy they were so soiled and stained that they could not be salvaged. Consequently, the Landlord sought to recover the cost to replace the carpets in two bedrooms in the lower part of the rental property.

The Tenants said the Landlord never advised them that the carpets in the lower part of the rental unit were “newer” and they claimed that those carpet were also worn at the beginning of the tenancy and that carpet cleaning only brought out old stains. The Tenants claim that a realtor told them that the owner was going to remove all of the carpets from the rental unit so they asked the Landlord if they should shampoo the carpets. The Landlord advised the Tenants that she would try to find out the owner’s intentions. The Landlord said the owner wanted to see the carpets first so she could not get back to the Tenants about carpet cleaning by the end of the tenancy. The Tenants said the carpets in the upper part of the rental unit were original and therefore approximately 20 years of age. Consequently, the Tenants said they believed the carpets downstairs were at least 10 years old and probably older.

The Landlord also claimed that at the beginning of the tenancy, the back yard was in good condition although she admitted that the lawn was “sparse.” However, at the end of the tenancy, the Landlord claimed that the property owner incurred expenses to remove garbage left behind by the Tenants, to remove dog feces, to fill holes, to re-seed the yard and to generally clean up the yard and garage.

The Tenants admitted that they forgot some belongings under the patio and forgot to clean under the stairs. The Tenants said they routinely cleaned up dog feces from the yard so there would have been very little to remove at the end of the tenancy. The Tenants denied that their dog dug holes in the back yard and claimed that they were there at the beginning of the tenancy. The Tenants claimed that the garden area had only a dead grape vine and that it was a “rough looking yard with only a few clumps of grass.” The Tenants denied that the garage required cleaning at the end of the tenancy and specifically denied that their dog had urinated in there or had ever been left in there as the Landlord alleged.

## Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit (and rental property) reasonably clean and undamaged except for reasonable wear and tear.

Section 35(2) of the Act says that at the end of a tenancy, the Landlord must offer the Tenant two opportunities to inspect the condition of the rental unit. Section 17 of the Regulations to the Act says that the Landlord must propose the 2<sup>nd</sup> opportunity by way of a notice in the prescribed form (or a Final Notice to Schedule a Condition Inspection).

Section 36(2) of the Act says that if a Landlord does not comply with s. 35(2), the Landlord's right to make a claim against a security deposit or pet damage deposit for damages to the rental unit is extinguished. That is to say a Landlord may still recover compensation for damages, but may not make a claim against the security deposit or pet damage deposit to recover the compensation.

In this matter the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenants were responsible for damaging the carpets in the rental unit and are therefore responsible for the cost to replace them. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In this case, the Tenants claimed that they should not be responsible for replacing the carpets because they were already old (at least 10 years) and worn at the beginning of the tenancy. The Landlord could not say how old the carpets were.

In the absence of any evidence from the Landlord as to the age of the carpets downstairs, I accept the evidence of the Tenants and find that they were at least 10 years of age. Given that the useful lifetime of carpeting is 10 years, I find that the existing carpet in the lower part of the rental unit had no further value and as a result, I find that the Landlord is not entitled to recover the cost from the Tenants of replacing those carpets. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

Given that the move out condition inspection report was not completed in accordance with the Regulations to the Act, I give it little evidentiary weight as far as the condition of the rental property is concerned. Furthermore, the Landlord admitted that it would have been useless to schedule any further inspections after April 7, 2010 because the owner of the rental property had already started working on the yard and house. The Landlord also provided photographs of the rental property that she said she took on April 1, 2010 after the Tenants had vacated. The Tenants disputed that all of these photographs accurately represented the condition of the rental property after they vacated it.

The Landlord also has the burden of proof and must show that the Tenants were responsible for damages to the yard and therefore the cost to repair them. The Tenants admitted to leaving belongings under the patio and to not sweeping under the stairs. The Tenants disputed that they were responsible for any other yard or garage clean up expenses because they yard was in poor condition at the beginning of the tenancy. The Landlord admitted that the lawn was "sparse" at the beginning of the tenancy and that no urine could be smelled in the garage during her bi-monthly inspections during the tenancy.

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Having regard to all of the evidence, I find that there is insufficient evidence to conclude that the Tenants should be responsible for the entire cost of repairing the yard and cleaning the garage. I find that the Tenants are responsible for the cost of removing garbage, a small amount of dog feces and sweeping the walkways. Consequently, I award the Landlord \$200.00 for this part of his claim.

As the Landlord has been largely unsuccessful on her application, I find that it would not be appropriate to allow her to recover the \$50.00 filing fee from the Tenants and that part of her claim is dismissed without leave to reapply.

Although s. 36(2) states that a Landlord's right to make a claim against a security deposit for damages to the rental unit is extinguished for not complying with s. 35(2) of the Act, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$200.00 from the Tenants' security deposit to compensate her for the damages.

I order the Landlord to return the balance of the Tenants' security deposit and pet damage deposit to them in the amount of \$1,150.00 forthwith.

## Conclusion

A Monetary Order in the amount of **\$1,150.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: August 31, 2010.

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Dispute Resolution Officer