



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application. The Agent appeared on behalf of the Landlord named as the applicant in this dispute. The Agent will be referred to as Landlord in this decision.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 9, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on December 14, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified the Tenant was sent copies of all of their evidence along with copies of the hearing documents. She could not provide testimony pertaining to service of evidence to the *Residential Tenancy Branch*. I informed her that there was no evidence on the file or in the electronic file in support of this application. The Landlord stated that she wished to proceed with the hearing based on her affirmed testimony.

She advised the rental unit is a 1 bedroom condo which has been owned since the summer of 2009. She did not know if anyone had occupied the unit prior to this tenancy. The parties entered into a written fixed term tenancy agreement effective December 1, 2009 which was set to switch to a month to month tenancy after November 30, 2010. Rent was payable on the first of each month in the amount of \$1,700.00 and on November 25, 2009 the Tenant paid the Landlord \$850.00 as the security deposit.

The tenancy ended after the Tenant provided proper notice to end the tenancy. A move-in inspection report was completed on November 24, 2009 and a move-out inspection report was completed on December 2, 2010. The Tenant provided the Landlord with his forwarding address on December 2, 2010.

The Landlord advised the Tenant signed the move-out inspection report form agreeing to the condition of the rental unit and to the following charges:

- \$100.00 + HST for carpet cleaning
- \$160.00 + HST for cleaning the rental unit
- The Tenant was to be taking care of the required painting
- (Unknown) amount for repair to the hardwood floors
- (Unknown) amount for the removal of debris that was left in the unit

The Landlord has had the damages repaired and is seeking the following monetary compensation:

- \$280.00 for painting the unit as the Tenant failed to take care of it.
- \$1,512.00 to repair the hardwood flooring
- \$526.40 for steam cleaning the carpet and the removal of the garbage.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Given the testimony before me, in the absence of documentary evidence from the Landlord or Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord. That being said I accept the Tenant agreed, in writing on the move-out inspection form, to the Landlord retaining \$100.00 + HST for carpet cleaning and \$160.00 + HST for cleaning the rental unit. Therefore, I approve the Landlords claim in the amount of **\$291.20**.

In the absence of documentary evidence to support the work was actually completed, the date the work was performed, and the amounts paid to repair the floor, paint the unit, and increased charges for cleaning the unit and carpet cleaning, I find the Landlord has provided insufficient evidence to meet the test for damage or loss, as listed above, and I hereby dismiss the remainder of their claim of \$2,027.20 (\$280 + \$1512 + \$526.40 - \$291.20).

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of \$25.00.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Carpet cleaning and cleaning the unit	\$291.20
Filing fee	25.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$316.20</b>
Less Security Deposit of \$850.00 plus interest of \$0.00	- 850.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANT</b>	<b>\$533.80</b>

The Landlord is hereby Ordered to return the balance of the security deposit to the Tenant in the amount of \$533.80.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$533.80**. The order must be served on the Landlord and is enforceable through the Provincial Court 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: March 18, 2011.

---

Residential Tenancy Branch