



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, OLC, RP, RR, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, that the landlord comply with the Act by making repairs to the rental unit, that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$300.00 as damage or loss under the Act?

Must the landlord be Ordered to comply with the Act by replacing the carpets?

Is the tenant entitled to rent reduction in the sum of \$50.00 per month since the tenancy began, in the absence of carpet repair that was promised?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on December 7, 2007; rent is currently \$1,451.74 per month, due on the first day of each month. A deposit in the sum of \$675.00 was paid at the start of the tenancy.

The tenant has made the following claim:

Loss of value @ \$50.00/month for 59 months	2,950.00
Loss of quiet enjoyment, 4 days during flood in May, 2011	300.00
<b>TOTAL</b>	<b>3,250.00</b>

On December 2, 2007, a move-in condition inspection report was completed by the previous landlord, with the tenant. The report, a copy of which was supplied as evidence, indicated that the rugs had not yet been cleaned, that they appeared stained, that the living room carpet was not free of burns and stains and was not cleaned. The tenant was under the impression that prior to moving in the carpets would be cleaned and that if they did not improve in appearance they would be replaced.

Prior to moving in the unit was painted and the carpet was in such a state of disrepair the painters did not use a drop cloth; this resulted in paint splatters on the rugs.

Copies of photographs of the carpets, taken several weeks prior to the hearing, were supplied as evidence, which showed stains, paint marks, and wear and tear.

On December 10, 2007, the tenant completed a work order repair form and submitted it to the landlord, requesting an inspection of the carpet and indicated that the tenant had assumed they would be replaced as the rugs were quite old.

In August 2010, a flood occurred, in the tenant's unit. On May 19, 2011 another flood, the result of a burst hot water tank in a neighbouring suite, resulted in the placement of fans and dehumidifiers in the tenant's unit.

On May 24, 2011, the floor was measured as the flood had caused damage to the hallway flooring. The water travelled through the hallway, into the bedroom and closet. This caused 4 days of inconvenience to the tenant, who had to move belongings and deal with the fans and dehumidifiers operating in her unit. At the time, the tenant did not request any assistance from the landlord.

On May 24, 2011, the tenant's agent wrote the landlord asking that the aged carpets be replaced. The tenant pointed out that when the flood had occurred on May 19, 2011, the tenant had again complained about the state of the flooring.

On June 1, 2011, the tenant's agent sent written communication to the landlord who indicated a claim would be submitted in relation to loss suffered as a result of the 2 floods, plus a claim for loss as a result of a failure of the landlord to replace the carpeting. The letter was on the agent's letterhead, identifying her as legal counsel. On June 1, 2011, the landlord responded indicating that the tenant had not assigned anyone to act as her agent and that any claim should be filed as a dispute with the Residential Tenancy Branch.

The landlord assessed the flooring and on June 3, 2011, installed tile in the hallway, but did not replace any of the remaining carpet.

An undated letter signed by the tenant, provided the landlord with background in relation to the tenant's on-going request for carpet replacement and the floods. The tenant pointed out that as units were being vacated, the flooring was being replaced, but that the landlord was refusing to replace her aged carpet.

On October 24, 2011, the landlord sent the tenant a letter which confirmed replacement of the entry flooring and that, upon inspection of the unit in June, 2011, they had determined that the remaining flooring was in good condition and did not require replacement.

The tenant stated that the refusal of the landlord to replace the aged flooring has been embarrassing to her; the floods caused inconvenience and that the landlord's refusal to replace the floors at the start of the tenancy has affected her enjoyment of the unit.

During the hearing the maintenance manager testified that the carpeting was approximately fifteen or sixteen years old.

The landlord testified that they do not believe the tenant is entitled to compensation for loss of value of her unit as she has not made a concerted effort to communicate with the landlord in relation to a potential loss. During the time of the flood the landlord responded quickly, took all reasonable steps and was never informed of any need for assistance or any concern that the tenant was suffering a loss of value.

The landlord had nothing in their file dated prior to May 2011 and that after May 2011; the tenant did not raise the issue again for another year.

#### Mutual Agreement – Carpet Replacement

During the hearing the parties came to agreement that the carpeting should be replaced.

The parties could not reach agreement on the mechanics of replacement; such as the need to move the tenant's belongings and who should bear this cost.

However, based on the acknowledgement of the landlord that the carpets are well beyond the suggested lifespan of 10 years, as provided by Residential Tenancy Branch policy, I also Order, pursuant to section 62(3) of the Act, that the landlord replace the aged flooring in the unit with carpet or congoium, a product the landlord confirmed they are currently purchasing.

The tenant confirmed that either style of flooring would be acceptable; however, she would prefer the congoium as it is easier to clean.

I Order the landlord to complete the installation of the flooring no later than July 31, 2012.

### Monetary Claim Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, from the evidence before me that the move-in condition inspection report was completed before the carpets had been cleaned and their final state could be properly assessed. The tenant moved into the unit 5 days after the report was completed and within 3 days informed the landlord of the deficiency, which was not addressed until after the flood in May, 2011; when the water-damaged portion of the flooring was replaced.

Between December 2007 and May, 2011, there was no evidence of any further concern expressed by the tenant. However, when the tenant's agent; her daughter who acted as counsel, contacted the landlord in June, 2011, the landlord rejected this communication, as the tenant had not informed the landlord she had assigned an agent.

I found the rejection of the tenant's agent rather heavy-handed. There was no evidence that the landlord contacted the tenant to confirm the assignment of the agent; they simply rejected the submission that had been made on behalf of the tenant. Rather than respond to what was now a long-standing request for new carpeting, the landlord simply suggested the tenant apply for dispute resolution.

It was not until the tenant sent the landlord a hand-written note, that the landlord again responded, rejecting the request for new flooring, as a result of the assessment that had been made in June, 2011.

I find that the tenant took possession of unit that had, at the time, carpet that was already eleven years old. Residential Tenancy Branch policy suggests that carpets have a useful lifespan of 10 years; which I find is a reasonable stance. From the photographic evidence, it is clear that the carpets are worn, stained and have paint splattered on them.

Section 32 of the *Act* provides, in part:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and  
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I find, based policy and a reasonable expectation that flooring be in a state of decoration that complies with basic housing standards, that at the least, from May, 2011, onward, the landlord failed to accept that the fifteen year old carpet was in a less than satisfactory state.

The landlord is replacing flooring when other occupants vacate, but they do not wish to incur costs that would result from having to move the tenant's belongings. Otherwise, it seems reasonable to accept that the tenant's flooring would otherwise be replaced.

Therefore, as the parties have agreed the flooring is to be replaced and I have Ordered the work be completed by July 31, 2012, I further Order the landlord to assume all costs required; which includes moving and securely storing the tenant's belongings while the flooring is being installed. I find that the tenant has proven that the on-going failure of the landlord to replace the carpets resulted in a loss of enjoyment to the tenant equivalent to the sum that the landlord will incur when moving the tenant's belongings and installing the flooring.

The tenant will cooperate with the landlord to allow the flooring to be installed by the date ordered and will be responsible for ensuring that all valuable belongings are first removed and stored elsewhere. This Order is meant to compensate the tenant for the loss of value that she has experienced in relation to occupying a unit that had flooring that was beyond its useful lifespan when the tenancy commenced in 2007.

I have not placed a monetary value on the cost of moving the tenant's belongings, as the landlord may well be able to arrange completion of the work within a one day period of time, when the tenant's items may be stored in the rental building; thus minimizing the cost. The parties are at liberty to come to a written agreement altering the date of flooring installation, as this may assist them in accommodating the temporary storage of belongings in the most cost-effective manner.

In the absence of evidence that the tenant approached the landlord during the time of the floods to request assistance and express concern for a loss of value of the tenancy, I dismiss that portion of the claim.

As the tenant's claim has merit I find that the tenant may deduct the \$50.00 filing fee from the next month's rent owed.

### Conclusion

The landlord will replaced all aged carpeting in the rental unit no later than July 31, 2012; unless the parties agree, in writing, to other terms.

The landlord is deposable for all costs of the flooring installation including the moving and storage of the tenant's non-valuable belongings. This satisfies the tenant's claim for loss of value.

The balance of the tenant's claim is dismissed.

The tenant may deduct the \$50.00 filing fee from the next month's rent due.

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: June 21, 2012.

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Residential Tenancy Branch