



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR, OPC, MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and for damages to the unit.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant confirmed receipt of all evidence submitted by the landlord and there were no disputes in relation to review of the evidence submissions. The tenant did not submit any evidence.

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 a monetary order for unpaid rent?  
Is the landlord entitled to monetary compensation for damages?

### Background and Evidence

The tenancy began on March, 1, 2013. Rent in the amount of \$2,300.00 was payable on the first of each month. A security deposit of \$1,150.00 was paid by the tenant. The tenant vacated the unit on August 11, 2013.

The landlord claims as follows:

a.	Unpaid rent for August 2013	\$ 2,300.00
b.	Cleaning services	\$ 180.00
c.	Removal and disposal of damage carpet	\$ 583.75
d.	Painting	\$ 808.50
e.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 3,922.25</b>

### Unpaid rent for August 2013

The landlord testified that the tenant started to sub-lease the rental unit in July 2013, without their consent and in early July they received a call from the concierge to alert them about strangers visiting the condo at all hours of the night. The landlord stated that when they attended the unit on July 20, 2013, there was evidence the unit was being used as a brothel. The landlord stated the tenant was served with a notice to end tenancy for cause and was instructed to have the occupants removed from the rental unit and to repair the damages.

The landlord testified that on August 11, 2013, the tenant vacated the rental unit and returned the keys. The landlord stated that the cheque they received for August 2013, rent was returned for insufficient funds. The landlord seeks to recover unpaid rent in the amount of \$2,300.00. Filed in evidence is a copy of the cheque.

The tenant testified that he was out of the unit in July as requested by the landlord and should not be required to pay rent for August 2013. The tenant acknowledged that on August 11, 2013, he attended the rental unit for a move-out inspection and that the unit was in a terrible condition.

When the tenant was question about the date they vacated the rental unit as it was agreed at the start of the hearing that they vacated on August 11, 2013. The tenant stated that he was mistaken. However, I note as this was an issue at the start of the hearing the tenant was given considerable time to sort through his papers before agreeing the tenancy date was August 11, 2013.

### Cleaning services

The landlord testified that the tenant did not clean the rental unit and that they had to hire a cleaning company. The landlord stated that the tenant did not clean any of the appliances. The landlord stated there was cigarette ashes everywhere, hotdog buns left out on the balcony. Filed in evidence are photographs of the appliances.

The landlord testified that they hired the cheapest cleaning company they could find and that they also did approximately four hours of work themselves. The landlord seeks to recover the cleaning cost in the amount of \$180.00 Filed in evidence is a copy of the cleaning invoice dated August 28, 2013.

The tenant testified that he agreed the rental unit was in a terrible condition on August 11, 2013. The tenant stated that he gain access to the unit from the property manager and went back to the unit on August 15, 2013 and cleaned the entire unit.

The landlord denied that the tenant was given access to the unit after August 11, 2013. The landlord stated when they had the unit cleaned on August 28, 2013, there was no

change in the condition of the unit. The landlord stated that the concierge was also instructed to notify them if anyone was attempting to gain access to the unit.

#### Removal and disposal of damage carpet

The landlord testified that the carpets were in good condition at the start of tenancy. The landlord stated the living room carpet was ripped and there were stains left everywhere after the tenant attempted to clean them. The landlord stated due to the condition of the carpets they were required to replace the flooring and the cost was \$3,027.89. The landlord stated that they are only seeking to recover 1/3 of the labour cost (\$226.00), which would be for the removal of the damaged carpets, the cost of removing/installing of the baseboards (\$165.000) and the cost of the garbage removal of the carpet (\$240.00). The landlord seeks to recover the amount of \$531.00. Filed in evidence are photographs of the carpets.

The tenant testified that the photographs submitted show the carpets prior to him cleaning the carpets and that he cleaned those carpets on August 15, 2013, when he gained access to the unit and that there were no stains. The tenant stated the carpet was not ripped it was merely a pulled thread and he had that repaired on August 15, 2013.

The landlord argued that this was not just a pulled thread as you could lift the carpet off the floor from either side of the rip.

#### Painting & door repair

The landlord testified that there was no damage or scratches on the walls at the start of the tenancy and that the unit was freshly painted when the tenant took possession on March 1, 2013. The landlord stated that at the end of the tenancy there were marks, holes and scratches everywhere. The landlord stated that the tenant also cause damage to the closet and storage door. The landlord seeks to recover the cost for painting and door repairs in the amount of \$808.50. Filed in evidence are photographs of the walls, door frame and door.

The tenant testified that this is normal wear and tear. The tenant stated when he went back to the unit on August 15, 2013, he was able to remove most of the marks with a magic eraser.

#### 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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their 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.

#### Unpaid rent for August 2013

Under section 26 (1) of the Act, A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of both parties at the start of the hearing was that the tenancy ended on August 11, 2013. During the hearing the tenant stated he should not have to pay rent for August as he had vacated the unit in July. However, the parties attended the unit on August 11, 2013, to inspect the unit and the tenant agreed that the unit was in a terrible mess and the keys to the rental unit were returned. Further, I note the tenant had issued a rent cheque for August, 2013, and that was returned for insufficient funds.

Even if I accept the tenants version that he move-out in July (which I do not), as I found the tenant's testimony conflicting and lacking credibility as his version of events continued to change throughout the hearing. I find the tenant had possession of the rental unit until August 11, 2013, when the keys were returned and the move-out inspection was completed.

I find the tenant breach 26 of the Act, when they failed to pay rent due under the terms of the tenancy agreement and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,300.00**.

### Damages

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord 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.

### Cleaning services

The evidence of the landlord was that the tenant did not clean the appliances or the rental unit and they had to pay a cleaning company. The evidence of the tenant was that on August 11, 2013, the unit was in a terrible condition; however, after the tenancy ended he gained access to the unit and that he cleaned the entire unit. The landlord denied that the tenant had access to the unit after August 11, 2013. The landlord denied any change in the condition of the unit when they attended with the cleaners on August 28, 2013.

In this case, I accept the evidence of the landlord as they were consistent throughout the hearing. I also find the tenant's position that he gained access to the unit after the tenancy ended to clean the unit to be highly unlikely and there was no additional evidence from the tenant to support such a claim.

As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the unit and the landlord suffered a loss, which is supported by a receipt. Therefore, I find the landlord is entitled to compensation for the cost of having the rental unit cleaned in the amount of **\$180.00**.

### Removal and disposal of damage carpet

The evidence of the landlord was that the carpet was ripped and stained. The photographs of August 11, 2013, support their position. The evidence of the landlord was that they do not seek to recover the cost of the flooring; however, they seek compensated for the labour for the carpet removal and the disposal fees. The evidence of the tenant was that on August 15, 2013, he gained access to the unit and cleaned and repaired the carpets. The landlord denied that the tenant had access to the unit after August 11, 2013 and denied that there was any change to the unit when the later attended.

In this case, I accept the evidence of the landlord as they were consistent throughout the hearing, and their testimony is support by photographs of the carpet that is

damaged and stained. I also find the tenant's position that he gained access to the unit after the tenancy ended to clean and repair the carpets to be highly unlikely and there was no additional evidence submitted by the tenant to support such a claim.

I find the tenant has breached section 37, when they failed to have the stains removed from the carpet or repair the carpet when they vacated the rental unit and this has caused losses to the landlord. The landlord has submitted a receipt and is claiming only a portion of the total amount. I find the amount claimed by the landlord to be reasonable. Therefore, I find the landlord is entitled to compensation for the cost of having the labour and removal of carpet in the amount of **\$531.00**.

#### Painting & door repair

The evidence of the landlord was that the tenant left the walls with marks, holes and scratches. The evidence of the landlord was the unit was freshly painted at the start of the tenancy and there were no marking on the walls. The evidence of the tenant was that he believed this to be normal wear and tear. The evidence of the tenant was that he went back to the unit on August 15, 2013, and he was able to remove most of the marking with a magic eraser.

In this case, I accept the evidence of the landlord as they were consistent throughout the hearing, and their testimony is support by photographs which show damage to the walls. I also find the tenant's position that he gained access to the unit after the tenancy ended to clean the walls with a magic eraser to be highly unlikely and there was no additional evidence submitted by the tenant to support such a claim.

Further, the tenant submits that the damage to the walls and doors was normal wear and tear. However, I find scratching of walls or damage to the doors is not a natural deterioration of an item use and the aging process. Rather, I find scratching of the walls and damage to the doors, such as in the cause, is cause by neglect. Therefore, I find the landlord is entitled to compensation for the cost of having the rental unit walls painted in the amount of **\$808.50**.

I find that the landlord has established a total monetary claim of **\$3,869.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,150.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$2,719.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance 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: September 27, 2013

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Residential Tenancy Branch

