



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNSD; FF

### **Introduction**

This Hearing was convened to consider the Landlord's Application for Dispute Resolution seeking a Monetary Order for damages; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

The Tenants acknowledged service of the Landlord's Notice of Hearing documents by personal service at their new address on July 31, 2015. Each party also acknowledged that they were served with the other party's documentary evidence.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for damages to the carpet at the rental unit?
- If so, may the Landlord apply the security deposit towards his monetary award?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 15, 2012. Monthly rent was \$975.00, due on the fifteenth day of each month. The Tenants paid a security deposit in the amount of \$487.50 and a pet damage deposit in the amount of \$212.50 at the beginning of the tenancy. The tenancy ended on July 15, 2015. The pet damage deposit was returned to the Tenants on July 28, 2015. The Landlord made his Application on July 30, 2015.

#### **The Landlord gave the following testimony:**

The Landlord testified that the carpet in the rental unit was new at the beginning of the tenancy. He stated that on July 16, 2015, he met with the female Tenant at the rental unit. The Landlord testified that the rental unit was clean and undamaged, except for the carpet. The Landlord stated that there were "pulls" in the berber carpet.

The Landlord stated that the Tenants did not advise him of any damage to the carpet during the tenancy. The female Tenant told the Landlord that the carpet had been damaged by the vacuum cleaner and asked the Landlord for a damage quote to repair the carpet. The Landlord stated that after he provided the estimate to the Tenants, they advised him that they would not agree to pay for replacement of the carpet because they believed the damage was due to normal wear and tear. The Landlord stated that there was more than one area that had "pulled" and questioned why the Tenants would continue to vacuum and cause more damage.

The Landlord testified that he made enquiries but was told that the carpet could not be repaired because it is a seamless carpet and the dye lots may not match. The Landlord contacted the original carpet layer, who looked at the carpet and confirmed that it could not be repaired and had to be replaced.

The Landlord provided photographs of the damage to the carpet, a copy of the note from a repairman and a copy of the estimate to replace the carpet, dated July 17, 2015.

The Landlord seeks a monetary award in the amount of \$949.81, which is the estimated cost of materials and labour to replace the carpet.

The Tenants gave the following testimony:

The Tenants testified that there was no Condition Inspection Report done at the beginning of the tenancy; however, they acknowledged that the carpet was new and installed shortly after the beginning of their tenancy.

The Tenants stated that they did not advise the Landlord about the damage to the carpet because there were other problems in the rental unit that the Landlord would not address.

The Tenants submitted that they have children and that the "fraying" was a result of normal wear and tear from the kids playing on the carpet.

The Tenants' advocate stated that the Tenants have two children, aged 1 and 5 years. She stated that the carpet is in the rec room where the children play. She questioned the quality of the berber carpet.

The Tenants' advocate questioned why the damage was not covered under warrantee. She stated that the Tenants obtained their own estimate for repair of the carpet. A copy of the estimate was provided in evidence. The estimate is for labour and materials for repairing the carpet with a 1'3" x 12" patch, and is in the amount of \$162.12.

The Landlord gave the following reply:

The Landlord stated that the carpet was of good quality and that the damage was not covered under warrantee because the carpet was not defective.

## Analysis

This is the Landlord's claim and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy.

Based on the oral testimony and documentary evidence provided, I find that it is likely that damage to the carpet was not caused by reasonable wear and tear. The question remaining is whether or not the Tenants are responsible for the cost of replacing the entire carpet, or for having the existing carpet repaired.

The Tenant's estimate is for the identical product description as the Landlord's estimate. The Tenant's estimate includes the following information: "Customers measurement. Rough quote only for Rental House. Cannot Guarantee that repair will be a perfect match." [reproduced as written]. The Landlord provided a letter from the original installer which states, in part: "With cross seams there is a tendency to get fuzz and have pulls and/or runs because the installer would need to cut across the loops..... In order to repair the area and not have any cross seams like the original installation the minimum amount of carpet that [the installer] would need is 2' x 18'6..... The other variable was the 2' x 18'6 new installation piece would also be a slightly different color as it would come from a different dye lot and be 3 years difference in age." [reproduced as written].

I find that it is most likely that a patch would not match the remaining carpet in colour, and that it would be more susceptible to pulls. Therefore, I find that the Landlord is entitled to have the carpet replaced.

The Residential Tenancy Branch Policy Guidelines (the "Policy Guidelines") provide that when damage is found to be caused by a tenant, I may consider the useful life of a building element and the age of the item. The parties agreed that the carpet was approximately 3 years old. The useful life of a carpet is 10 years. Therefore, considering that the carpet has approximately 7/10s of its life remaining, I allow the Landlord's claim in the amount of **\$665.00**

The Landlord's Application had merit and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenants, for a total of **\$715.00**.

The Landlord did not perform a Condition Inspection with the Tenants at the beginning of the tenancy and therefore he extinguished his right to claim against the security deposit. However, pursuant to the provisions of Section 72(2) of the Act, I hereby set off the Landlord's monetary award against the security deposit and provide the Landlord with a Monetary Order for the balance, calculated as follows:

|   |                  |
|---|------------------|
| Monetary award  | \$715.00         |
| Less security deposit                                 | <u>-\$487.50</u> |
| <b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b> | <b>\$227.50</b>  |

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$227.50** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 11, 2016

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Residential Tenancy Branch

