



# 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 in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for damage pursuant to section 67;
- authorization to retain of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

### Issues

Is the landlord entitled to a monetary award for compensation for damage?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background & Evidence

The tenancy for this single detached two story house began on April 1, 2016 with a monthly rent of \$1500.00 payable on the 1<sup>st</sup> day of each month. The tenancy ended on March 31, 2017. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy which the landlord continues to hold. The landlord's application to retain the security deposit was filed on April 13, 2017 within the 15 day time period after the end of the tenancy as required under the Act.

The landlord is claiming \$210.00 for replacement of a broken window. The tenant agreed to this part of the landlords claim.

The landlord is claiming \$94.21 for the replacement of a broken fridge shelf. The landlord submits the damage was noted during a monthly home inspection conducted in July 2016. The tenant at the time stated the fridge shelf was broken by a guest and verbally agreed to pay for it. The landlord submitted an invoice for the replacement shelf part.

The tenant testified that a corner of the plastic frame around the fridge shelf cracked when a guest pulled out the fridge drawer. She originally agreed to pay but after looking into the matter, understood that appliance repairs were up to the landlord.

The landlord is claiming an amount of \$150.00 in cash paid to someone to have the yard and garden bed area cleaned up at the end of the tenancy. The landlord submits various pictures of the yard and garden bed before and after the tenancy. The landlord testified that lawn repair work was required in areas where the tenant left fence pieces on the lawn. Repair work was also required on a portion of the lawn adjacent to the driveway which the tenants drove over. The landlord submits yard waste was thrown on top of the garden bed.

The tenant submits that she was willing to pay to fix the lawn adjacent to the driveway but then the landlords started the Arbitration process. The tenant submits she is not sure if they caused the damage or if it was the result of the landlord driving over the lawn during snow removal. The tenant submits the pictures submitted by the landlord reflect pictures of the yard and garden area before her husband did work on them prior to moving in. She submits only compost was thrown on the garden bed. She acknowledged a couple fence posts may have been left on the lawn but the holes were filled with her foot as they did the walk around.

The landlord is claiming \$400.00 for expense incurred to have the carpets cleaned. The landlord testified there was a strong smell left in the rental unit which could be animal urine. The tenants did not clean the carpets on move-out. The landlord submitted an invoice dated April 26, 2017 for this expense. The landlord submitted various picture of stained carpets in the rental unit.

The tenant testified the smell was discussed with the landlord and it was likely from a rat infestation in the office as indicated in the condition inspection. She argues that there was no mention of any smell in the other rooms. The tenant argues that tenants are not responsible to clean carpets unless the tenancy is for more than one year.

The landlord is claiming \$350.00 for expense incurred in having the rental unit cleaned at the end of the tenancy. The landlord submitted various pictures of the condition of the rental unit before and after the tenancy. There was picture evidence of mold on a window sill, stains and cat hair on flooring, decals placed on walls by the tenants, water damage on bathroom flooring and garbage in floor vents. The landlord submitted an invoice for an estimate of the cleaning work required by a professional cleaning company dated April 3, 2017. The landlord submits the cleaning work has not yet been done as they are waiting until they move into the rental unit.

The tenant argued the house was cleaned by three people over 4 hours at the end of the tenancy. She testified they cleaned all the windows but missed the one the landlord submitted a picture of. The tenant also argues the landlord's photos were taken after the move-out inspection. The tenant also argues that the estimate for cleaning included cleaning and deodorizing of carpets which has already been claimed by the landlord.

The landlord is claiming an amount of \$2148.47 for replacement of a downstairs carpet. The landlord submitted an invoice for the expense incurred in having the carpet replaced. The landlord submitted a picture of damage to this carpet which reflects a tear in the carpet. The landlord assumes this was from the tenants pets. The landlord testified the carpet is 40 years old but was in good condition other than some fading. The landlord testified they would not have needed to replace the carpet if not for the damage.

The tenant argues this carpet damage was not reported on the move-out condition inspection and added afterwards by the landlord. The tenant again submits the picture was taken after move-out.

The landlord submits the picture is dated March 31, 2017, the same day as the move-out inspection. It was not included on the inspection report as it was discovered later the same night when they did a more detailed inspection. The landlord submits they e-mailed the tenants shortly afterwards with respect to finding this additional damage.

The landlord is claiming \$375.00 for refinishing a bathtub to repair a chip caused by the tenant. The landlord submitted before and after pictures of the tub reflecting the chip damage. The landlord submitted an estimate for this repair work.

The tenant argues this item was also added by the landlord after the initial move-out inspection. She submits it was not found during the initial walk through and she did not notice any chips in the bathtub.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord is awarded **\$210.00** for the replacement of the broken window as agreed to by the tenant.

The landlord is awarded **\$94.21** for the replacement of the fridge shelf. The tenant acknowledged the part was broken by a guest. The tenant is responsible for this damage as it is not reasonable wear and tear and it was caused by the tenant or a guest of the tenant.

The landlord is awarded **\$150.00** for expense incurred to clean-up the yard and garden area as well as repair areas of the lawn. I accept the landlord's before and after pictures as evidence in support of the landlord's claim that the tenants did not leave these areas reasonably clean and undamaged at the end of the tenancy. The picture evidence supports the landlord's claim that waste was thrown in the garden bed and not compost. The pictures also support damage to the lawn adjacent to the driveway. The tenant is speculating that this was caused by the landlord during snow removal but provided no evidence of such.

The landlord is awarded **\$400.00** for carpet cleaning. I accept the landlord's picture evidence and find the tenants did not leave the carpets reasonably clean at the end of the tenancy. As per the pictures, there are various stains on the carpets. Tenants are responsible for periodic cleaning of carpets during the tenancy. Where tenants have stained carpets, they are responsible for cleaning regardless of the length of tenancy.

I accept the landlord's testimony and evidence that the rental unit was not left reasonably clean at the end of the tenancy. I accept the pictures to be an accurate reflection of the condition of the rental unit at the end of the tenancy even though the pictures were taken shortly after the move-out inspection. As the invoice was only an estimate and it included cleaning and deodorizing carpets, which has been claimed separately, I award the landlord **\$250.00**.

I accept the landlord's testimony and picture evidence and find there was damage to the downstairs carpet and it was likely caused by the tenants' pets. It is not uncommon for

further damage to be uncovered after the initial move-out inspection. The fact that it was not found at the time of inspection does not mean the damage did not exist or was not caused by the tenants. I accept the landlord's testimony that this further damage was discovered during a more thorough inspection.

Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that carpets have a useful life of 10 years. As the replaced carpet was 40 years old at the end of the tenancy it had well exceeded its useful life. The landlord did not provide sufficient evidence to support that this particular carpet had a much longer useful life than as indicated in this guideline. However, I do accept the landlord's testimony that they would not have replaced the carpet if it was not for the damage, therefore, I find the landlord did still suffer some loss. I do not accept the landlord's claim for the full replacement cost of this used carpet. I find the landlord is entitled to 25% of the replacement cost for an award of **\$537.12**.

I accept the landlord's before and after pictures and find the damage to the bathtub was caused by the tenants. Again, the fact that it was not found at the time of inspection does not mean the damage did not exist or was not caused by the tenants. The after pictures were taken the night of the move-out and no other tenants were in the rental unit after this tenancy ended. Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that bathtubs have a useful life of 20 years. Although no specific evidence was obtained on the age of the bathtub, I find it is also likely original and approximately 40 years old at the end of the tenancy and it too had well exceeded its useful life. The invoice submitted by the landlord was also only an estimate and the repair work has not yet been completed. It is possible that the landlord may just replace the bathtub rather than incur a costly repair to fix a chip. In either event, I find the landlord did suffer some loss. I do not accept the landlord's claim for the full repair estimate. I find the landlord is entitled to 25% of the repair estimate for an award of **\$93.75**.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenants.

**Total entitlement for Landlord: \$1835.08** (\$210.00 + \$94.21 + \$150.00 + \$400.00 + \$250.00 + \$537.12 + \$93.75 + \$100.00)

The landlord continues to hold a security deposit in the amount of \$1500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award

pursuant to section 38 of the Act. The landlord is granted a monetary order for the balance of **\$335.08**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$335.08**. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: September 18, 2017

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Residential Tenancy Branch