



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for failure of the tenant to return an access fob as well as damage to and cleaning of the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 10, 2016 for a 2 month and 19 day fixed term tenancy beginning on June 12, 2016 for a monthly rent of \$2,000.00 due on the 12<sup>th</sup> of each month with a security deposit of \$1,000.00 paid; and
- A copy of a Condition Inspection Report that records the condition of the rental unit at the start and end of the tenancy. The tenant has signed the Report agreeing with the condition as recorded at the start of the tenancy but has signed the Report disagreeing with the condition as recorded at the end of the tenancy;

The landlord submitted that as a result of this short term tenancy the unit and some furnishings have been damaged. In support of her claim the landlord relies upon and has submitted, in addition to the Condition Inspection Report, photographs of the condition of some items at the start and end of the tenancy and estimates and invoices.

The landlord claims the following compensation for damage to the unit and furnishings:

Description	Amount
Kitchen countertop repair (estimate states \$250.00)	\$280.00
Dining Room Tabletop repair (estimate states \$225.00)	\$252.00
Dining Room Chair repairs (receipt)	\$336.00
Ottoman and Outdoor Cushion cleaning (estimate states \$147.00)	\$164.64
Replacement Outdoor Mat (estimate states \$49.00)	\$55.99

<b>Total claim</b>	<b>\$1,088.63</b>
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The landlord clarified during the hearing that the additional charges on the estimates submitted is for taxes.

The landlord also seeks \$40.00 to recover the costs she incurred when the tenants failed to return all access fobs. The tenant agrees that a fob was not returned to the landlord and agrees that the landlord is owed the amount of this claim.

The tenant submits that he agrees that his parents caused the damage to the kitchen counter and dining room table. He testified that this is just normal wear and tear. He stated that his mother had not been used to cooking with an electric stove because she had always used a gas stove.

In regard to the landlord's claim for compensation for the damage to the dining room chairs; the ottoman; the outdoor cushion and the outdoor mat that he does not recall the condition of the items at the start of the tenancy. He stated he believed that they were already damaged at the start of the tenancy.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept, based on the testimony of both parties, that the parties agreed the tenant owes the landlord \$40.00 for the replacement of an access fob.

I accept the tenant's admission that the burn marks on the kitchen counter and dining room table were caused by the tenant and his occupants. However, I am not persuaded by the tenant's assertion that his mother was not used to using an electric stove and that this damage was regularly wear and tear.

Therefore, I find the tenant is responsible to repair the damage to the kitchen counter and dining room table. I make this finding, in part, because if it was a normal practice to put hot pots that have just come off a stove directly onto the countertop and dining room table there would be, on a balance of probabilities, a significant number of burns not just two.

I also find that is unlikely that any person, regardless of the method of heating their pots would not know that by putting a hot pot on any surface damage may occur, especially a person who has cooked for several years, such as someone with adult children.

In regard to the landlord's claims for compensation for the remaining items, I find that the landlord has not recorded the condition of the dining room chairs, the ottoman, the outdoor cushion or the outdoor mat in the Condition Inspection Report. However, I am satisfied by the landlord's photographic evidence that she has recorded the condition of these items at the start of the tenancy.

As a result, I find the landlord's photographs from both the start and the end of the tenancy record that the items were damaged during the short tenancy and are therefore the responsibility of the tenant to ensure the landlord is compensated to repair the damage.

As a result, I find the tenant has failed to comply with his obligations set forth in Section 37 of the *Act*. Specifically, I find the tenant has failed to return the rental unit in a manner that was free from damage that was not normal wear and tear.

I am satisfied by the landlord's estimates and invoices of the costs that the landlord has incurred as a result of the condition of the items named in the landlord's claim establish the value of the loss suffered by the landlord as a result of this damage. Therefore, I find the landlord has established her claim in full.

While the landlord did not specifically seek to retain the security deposit as part of her Application for Dispute Resolution, I order the landlord may deduct the security deposit and interest held in the amount of \$1,000.00 in partial satisfaction of this claim, pursuant to Section 72(2)(b), leaving a balance of \$128.63 owing from the tenant to the landlord.

### Conclusion

Based on the above, I grant the landlord a monetary order in the amount of **\$228.63** comprised of \$128.63 balance owed, as noted above, and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 15, 2017

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Residential Tenancy Branch

