



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage to the suite and damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord testified that he did not receive a "hard copy" of the tenant's evidence, only an email copy. The landlord questioned whether the tenant was granted an order for substituted service, the tenant was not granted an order for substituted service. I have reviewed the tenant's 16 page submission, which contained a copy of the tenancy agreement with the landlord and a written statement disputing the landlords' claims. In the landlords own testimony, he acknowledged that he would not be prejudiced if this evidence was included and considered as part of this hearing, accordingly; the tenants documentary evidence was considered as part of this hearing. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is the landlord entitled to a monetary award as claimed?

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

### Background, Evidence

The landlord's testimony is as follows. The landlord testified that he is a tenant at the subject location and continues to reside there. The landlord testified that he sublet the unit for a term of one year less a day to the respondent in this matter commencing September 1, 2015 and ending on August 30, 2016. The landlord testified that the tenant paid \$22, 200.00 in advance for the entire term. The landlord testified that he had his landlords' written permission to sublet the unit.

The landlord testified that although he did not conduct written condition inspection reports at move in and moves out, he had strict criteria for the person that would occupy his furnished one bedroom apartment. The landlord testified that he was assured that the tenant would not smoke, have pets or have children in the unit. The landlord testified that he was shocked and upset at the condition of the unit at the end of the tenancy. The landlord testified that he had been living abroad for the term of the tenancy and thought his home was in good hands. The landlord testified that the tenant had left some of the furniture damaged beyond use and the unit dirty.

The landlord testified that the tenant left the unit so dirty that he and his wife took a combined 21 days off of work to buy new furniture, clean the suite, arrange for delivery of new furniture and conduct miscellaneous repairs. The landlord testified that he is seeking the following costs:

1.	Consequential Damages – Time 13 days	2716.35
2.	Consequential Damages – Time 8 days	2364.00
3.	Mobler – Sofa and Chairs	2076.48
4.	Home Sense – Carpet	335.99
5.	CB2-Desk Chair	222.88
6.	The Bay – Espresso Machine	251.65
7.	Miscellaneous supplies	77.47
8.	Filing Fee	100.00
	Total	<b>\$8144.82</b>

The tenant gave the following testimony. The tenant testified that since the landlord charged her higher rent than what he was paying, she has already covered the costs of

the damages. The tenant testified that she does take responsibility for the carpet, desk chair and miscellaneous costs but disputes the remainder of the landlords claim. The tenant testified that it was regular “wear and tear” and that she feels the matter is over.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected.

I address the landlords’ claims and my findings as follows.

### *Carpet, Desk Chair and Miscellaneous*

The tenant accepts responsibility for these claims. Based on that acknowledgment, I find that the landlord is entitled to \$636.34.

### *Consequential Damages 21 Days*

The landlord is seeking \$5080.35 in lost wages for a combined total of 21 days for him and his wife. The landlord is relying on a pro-rated amount based on their 2015 tax return. The landlord did not provide a detailed breakdown of the scope of work, hours worked for a particular task, all of the repairs conducted and the amount of hours worked each day. In addition, the landlord did not provide recent pay stubs to show earnings. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

### Espresso Machine

The tenant testified that the espresso machine worked on the first day she moved in and then it broke down. The tenant testified that she spent some money trying to fix it but was unsuccessful. The landlord testified that the espresso machine was in perfect working order when she moved in and should be held responsible for the cost of replacing it. The landlord testified that he took balls of cat hair out of the machine. The landlord provided photos of hair in the machine. In addition, the landlord provided e-mails from the tenant confirming that the unit was in perfect condition and that she was quite happy with it. The landlord testified that the machine was purchased several months before the tenant moved in. The landlord provided receipts to support his claim. Based on the above and on a balance of probabilities, the landlord has provided sufficient evidence to be successful in this claim and is entitled \$251.65.

### Sofa and Chairs

The landlord testified that the sofa and chairs had to be removed and disposed of as soon as they took possession of the unit. The landlord testified that the sofa and chairs were soiled with organic matter, urine, feces and pet hair. As noted in the above claim, the landlord provided e-mails from the tenant confirming that the unit was in perfect condition and that she was quite happy with it. The landlord testified that he was horrified to discover the sofa and chairs in such condition. The tenant disputes this claim. The tenant testified that they're may have been some minor staining and damage under the sofa but not to the extent the landlord has alleged.

The tenant testified that normal wear and tear applies in this instance. The landlord provided extensive and detailed photos that clearly show that this was far beyond normal wear and tear. In addition, the amount of staining and hair left behind was extreme. Based on the above and on a balance of probabilities, the landlord has provided sufficient evidence to support his claim. Residential Tenancy Policy Guideline 40 addresses the "useful life" of building elements; sofa and chairs are not listed. I find that a reasonable and expectable "useful life" for these items is ten years. The landlord stated that at the time the tenant moved out the items were three years old. I find that the landlord is entitled to a prorated amount of 70% of the total cost  $\$2076.48 = \$1453.54$ .

The landlord is also entitled to the recovery of the filing fee.

### Conclusion

In summary, the landlord has been successful in the following claims:

Mobler – Sofa and Chairs	1453.54
Home Sense – Carpet	335.99
CB2-Desk Chair	222.88
The Bay – Espresso Machine	251.65
Miscellaneous supplies	77.47
Filing Fee	100.00
Total	<b>\$2441.53</b>

The landlord has established a claim for \$2441.53. I grant the landlord an order under section 67 for the balance due of \$2441.53. This order may be filed in the Small Claims 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: April 10, 2017

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Residential Tenancy Branch