



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

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

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application and evidence ('Application'). In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

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

### **Background and Evidence**

This month-to-month tenancy began in November 2010, and ended on or around October 31, 2017. The tenant testified that this tenancy ended on October 31, 2017, while the landlord testified that the tenancy had ended on November 1, 2017. Monthly rent was set at \$625.00, and the landlord had collected a security deposit in the amount

of \$312.50, which the landlord still holds. Both parties confirmed that the landlord had the tenant's forwarding address.

The landlord requested monetary compensation as follows:

Item	
Flood Repair	\$420.24
Kitchen Sink Unplug (potting soil)	80.00
Repairs to back door	140.00
Kitchen Sink Unplug (dog hair)	80.00
Kitchen Sink Repair-July 2017	74.59
Kitchen Sink Repair	74.59
Washer	558.87
Cleaning	200.00
Take garbage to dump	10.00
Carpet Cleaning	74.98
Filing Fee	100.00
Less Security Deposit Held by Landlord	-312.50
Less Propane Rebate	-518.20
<b>Total Monetary Award Requested</b>	<b>\$982.57</b>

The landlord testified that the tenant had disposed of the washing machine, and attempted to dispose of the dryer without the landlord's permission. The landlord was able to recover the dryer, but not the washing machine. The landlord witnessed the tenant place the dryer in the truck as she was on her way to the dump. The tenant admits to disposing of the washing machine, but testified that she had the landlord's permission to do so as the machine was old.

The landlord testified that the tenant had attempted to install her own washing machine, and flooded the rental unit. The landlord testified that it took several days to dry and restore the unit. The tenant disputes the claim stating that the water damage was from leaking pipes and drains, and not due to her actions.

The landlord also made a claim for the repeated plugging of the sink with potting soil and dog hair. The landlord made monetary claims for the separate incidents that have occurred. The tenant disputes this monetary claim as she believes the plugging can be attributed to issues with the building, and not her actions.

The landlord testified that the tenant had damaged the bottom of the door, which was torn off. The tenant disputes this claim, stating that the damage was due to regular wear

and tear. The tenant testified that the sticker on the home indicated that it was built in 1975. The landlord was unable to provide verification of the age of the rental unit.

The landlord testified that the tenant moved out without properly cleaning the rental unit. The tenant disputes this claim, stating that she had left it in better condition than when she had moved in.

The landlord submitted receipts, invoices, and pictures in support of his claim.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates 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 tenant did not dispute that she had disposed of the washing machine, but she testified that she had permission to do so by the landlord. In the absence of supporting evidence or witness testimony to support the tenant's claims that she had permission to dispose of the washing machine, I find that the landlord had sufficiently supported his claim that he had to replace the washing machine due to the tenant's actions, and that she had no permission to do so.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the damages and losses claimed by the landlord. As per this policy, the useful life of a washing machine is 15 years. At the end of the tenancy the washing machine was approximately 7 years old, and had approximately 8 years of useful life left. The approximate prorated value of the remainder of the useful life of the washing machine is \$298.06 ( $\$558.87/180 \times 96$ ). Accordingly, I find the landlord is entitled to \$298.06 for the replacement of the washing machine.

The landlord made a monetary claim for the water damage that the landlord testified was due to the unauthorized replacement of the washing machine. The tenant disputes

this claim, stating that the damage was due to leaking pipes and drains. As there is conflicting testimony as to the cause of the water damage, and as the onus falls on the landlord to support his claim, I find that the landlord has provided insufficient evidence to support that the water damage was due to the actions of the tenant. On this basis, I am dismissing this portion of the landlord's monetary claim without leave to reapply.

The landlord also made a monetary claim for the clogging of the sinks in the rental unit. The landlord provided invoices to support the separate incidents that have occurred during this tenancy. Section 32(1) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I have considered the testimony of both parties, as well as the written evidence supported by the landlord, and while the landlord had provided evidence to support that the kitchen sink was clogged, the landlord did not provide sufficient evidence to establish that the clogs were solely attributed to the tenant's actions. The landlord was unable to testify to the age of the home, but as stated above, the landlord has a duty to maintain the property in a state of repair as required by law with regard to the age of the home and availability of materials for the home. I find that the incidents that required the attention of the landlord were an obligation of the landlord under section 32(1) of the *Act*, and not due to the tenant's failure to comply with section 37(2)(a) of the *Act*. On this basis, I dismiss the landlord's monetary claim for the clogging of the sink without leave to reapply.

The tenant did not dispute that the door was damaged, but cited wear and tear. As per Section 40 of the *Residential Tenancy Policy Guideline*, the useful life of a door is 20 years. As the rental unit was possibly built in 1975, and as the landlord was unable to testify to the age of the door or rental unit, I am unable to determine to whether the door has exceeded its useful life of 20 years. On this basis, this portion of the landlord's monetary claim is dismissed without leave to reapply.

The landlords also submitted a monetary claim in the amount of \$1,260.00. \$400.00 was for pressure washing the exterior for bugs and dirt. As this pertains to the exterior of the home that is exposed to a variety of weather conditions and elements, I find that within a ten month tenancy it is it would not be considered unreasonable for the area to be soiled with dirt and debris. On this basis, I dismiss this portion of the landlords' monetary claim.

I am satisfied that the landlord had sufficiently supported his monetary claim for cleaning that was required at the end of the tenancy. On this basis, I allow the landlord's monetary claim for the cleaning, carpet cleaning, and garbage disposal in the total amount of \$284.98.

The landlord continues to hold the tenant's security deposit of \$312.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit of \$312.50 in satisfaction of the monetary claim.

As the landlord was not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

### **Conclusion**

The landlord is entitled to a monetary award of \$643.04 for the losses associated with this tenancy. After deducting the propane rebate allowed by the landlord, and taking in consideration the security deposit held by the landlord, the tenant is entitled to a refund of \$197.66 of the security deposit as set out below.

Item	
Washer	\$298.06
Cleaning	200.00
Take garbage to dump	10.00
Carpet Cleaning	74.98
Filing Fee	50.00

Less Security Deposit Held by Landlord	-312.50
Less Propane Rebate	-518.20
<b>Total Monetary Order to Tenant</b>	<b>\$197.66</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

The remainder of the landlord's monetary application is dismissed without leave to reapply.

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: July 27, 2018

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Residential Tenancy Branch