



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNDC MND

### Introduction

This hearing dealt with applications from both parties for compensation under the *Act*.

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing with the tenants being represented by their daughter G.S., and the landlord being represented by agent, V.A. (the “landlord”). All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other’s applications for dispute resolution and evidentiary packages. Both parties are found to have been duly served in accordance with the *Act*.

Following opening remarks, the tenants’ agent G.S. asked to amend the tenants’ application for a monetary award to a lower amount of \$1,913.00. As the landlord would not be prejudiced by this amendment, pursuant to section 64(3)(c) of the *Act*, I amend the tenants’ application to reflect this lower amount. Similarly, the landlord asked to amend their application and remove a portion of their application seeking \$1,800.00 for water damage to a lower suite and its associated insurance issues. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to reflect a monetary award of \$4,344.20.

Preliminary Issue – Settlement

The tenants were applying for a monetary award pursuant to section 51(1) of the *Act*. This section states, "A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is equivalent of one month's rent payable under the tenancy agreement."

The landlord acknowledged that no compensation as described above was provided to the tenants following the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord conceded this amount was due and agreed to pay the tenants a monetary award of \$1,913.00. The tenants agreed to accept this amount in full satisfaction for their monetary award and application before me.

The tenants are therefore granted a monetary award of \$1,913.00.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Is either party entitled to a return of the filing fee?

#### Background and Evidence

The parties agreed this tenancy began in January 2017 and ended in May 2017 after the tenants were issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 8, 2017. Rent was \$2,050.00 per month and a security deposit of \$1,000.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said he was seeking a monetary award of \$4,344.20.as follows:

ITEM	AMOUNT
Replacement of glass stove top	\$754.95
Replacement of hood fan and microwave	509.25
Broken sink and faucet	450.00
Damage to hallway, closet and moulding	1,700.00
Replacement of Carpet	895.00
Broken entrance phone	35.00
<b>Total =</b>	<b>\$4,344.20.</b>

The landlord explained the unit in question was semi-furnished and was rented to the tenants for their own use. The landlord alleged the tenants did not in fact occupy the suite and had posted the rental unit on a short-term rental website such as AirBnb. The landlord argued this had led to numerous persons staying in the suite who had caused a significant amount of damage to the suite and alleged the damage in question went beyond “normal wear and tear” because of the short-term rental usage. The landlord said his building manager confirmed a “large” number of persons were seen “coming and going” from the unit, while a report from the building’s security company noted persons in the suite confirmed they were not the tenants named on the tenancy agreement.

The landlord’s agent said the unit had been renovated prior to the tenants’ occupation and was essentially new when it was first occupied by the tenants. The landlord said; a hood fan and microwave were broken and left damaged; a glass top stove was broken from a pot potentially being dropped on to its surface; a carpet was damaged, stained and in fact missing following the conclusion of the tenancy; a sink and faucet were left broken, loose and badly damaged; a security phone was missing; and paint in the hallway was significantly worn, scratched and cracked as a result of numerous suitcases banging against the walls. The landlord acknowledged the carpet and security phone in question had recently been returned but stated they were damaged beyond repair. The landlord said all items in question were purchased and new in either 2015 or 2016.

The tenants disputed that the unit had been rented on any short-term rental websites and explained that it was her family who had in fact been in occupation of the unit throughout the tenancy. The tenants conceded that at some points other family members had been in the rental unit but disputed the landlord’s contention that it was ever posted on AirBnb or any similar website.

As part of the tenants’ evidentiary package was a letter from their counsel, F.H. which argued that the landlord’s application should be dismissed because the items for which the landlord’s sought compensation were damaged due to normal wear and tear. The letter cited the *Residential Tenancy Policy Guideline* related to “normal wear and tear” and argued the landlord was “responsible for repairs to appliance as provided under the tenancy agreement unless the damages was caused by the deliberate actions or neglect of the tenant.”

The tenants argued that many of the items present in the unit were badly worn and disputed the landlord's contention that the unit was handed over in good condition. The tenants' agent alleged the condition inspection report completed by the parties was fraudulent, had not been signed by the tenants and did not fairly represent the condition of the unit at the outset of the tenancy.

### Analysis

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 his entitlement to a monetary award.

The landlord argued they were entitled to a monetary award because the tenants had damaged the rental unit beyond normal "wear and tear" and had used the rental unit as a short-term rental unit. The landlord acknowledged they had no evidence to support their argument, but cited numerous accounts from the building manager and the security company describing a large number of persons coming from the rental unit. Furthermore, the landlord said the security company had spoken to a person in the unit who acknowledged he was not the named tenant. The tenants maintained that the condition inspection report supplied by the landlord was fabricated and alleged that it did not fairly represent the state of the unit at the outset of the tenancy. I find little evidence was presented to support this argument, and I accept the condition inspection report showing the unit in good condition at the outset of the tenancy, along with the landlord's testimony to support his argument that the unit was new when the tenants took occupation.

I find the landlord has failed to provide sufficient evidence to demonstrate that the unit was used for short-term rental as alleged and I accept the tenants' contention that the persons in occupation of the suite were relatives and family members who stayed in the suite while the named tenants were away from the country. I will therefore consider the landlord's application in relation to normal wear and tear of the rental unit.

When questions of normal wear and tear are raised by a party *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This *Guideline* must be read in conjunction with *Guideline #1*, which states, “An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.”

After considering the testimony of all parties present, and having reviewed the landlord’s evidentiary package, I find the damage caused to the unit was not the result of deliberate damage but did occur through neglect and must therefore be considered in light of *Policy Guideline #40* which determines the useful life of items.

This guideline notes the following useful life of the following items listed by the landlord:

- Stove = 15 years
- Hood fan and microwave = 10 years
- Faucet/sink = 15 years
- Interior paint = 4 years
- Carpet = 10 years
- entrance/security phone = 15 years (intercom)

The landlord said all items were replaced new prior to the tenants occupation of the unit. The landlord placed the date for these items as being “new” in 2015 and 2016.

Replacement of glass stove top	\$754.95
Replacement of hood fan and microwave	509.25
Broken sink and faucet	450.00
Damage to hallway, closet and moulding	1,700.00
Replacement of Carpet	895.00
Broken entrance phone	35.00

### *Stove*

The landlord said the stove top was new two to three years ago. The useful life of a stove is fifteen years therefore there remains 84% of its useful life remaining. The landlord is awarded \$634.15 or 84% of the \$754.95 sought based on a calculation of the stove being two and a half years old.

### *Hood fan and Microwave*

The landlord said the microwave was new two to three years ago. The useful life of a microwave is ten years therefore there remains 75% of its useful life remaining. The landlord is awarded \$381.93 or 75% of the \$509.25 sought based on a calculation of the hood fan and microwave being two and a half years old.

#### *Faucet and Sink*

The landlord said the faucet and sink were new two to three years ago. The useful life of a faucet and sink is fifteen years therefore there remains 84% of its useful life remaining. The landlord is awarded \$378.00 or 84% of the \$450.00 sought based on a calculation of the faucet and sink being two and a half years old.

#### *Hallway Moulding/Closet/Paint*

The landlord said the home was painted two to three years ago and suffered from excessive damage related to the wear and tear of suitcases and persons coming and going from the apartment. The useful life of interior paint is four years therefore there remains 37.5% of its useful life remaining. The landlord is awarded \$637.50 or 37.5% of the \$1,700.00 sought based on a calculation of the interior paint being two and a half years old.

#### *Carpet*

The landlord said the carpet was new two to three years ago. The useful life of a carpet is ten years therefore there remains 75% of its useful life remaining. The landlord is awarded \$671.25 or 75% of the \$895.00 sought based on a calculation of the carpet microwave being two and a half years old.

#### *Phone (intercom)*

The landlord was unable to provide a date as to when the security phone/intercom was first installed; however, I find its complete removal to be odd and something that would not have been contemplated by the "useful life" guidelines. I award the landlord the entire amount sought for a return of the phone, in this case \$31.00.

The landlord is awarded a monetary award of \$2,733.83. Pursuant to section 72 of the *Act*, the landlord may offset the monetary award due to the tenants with the monetary award granted to them and a portion of the tenant's security deposit.

As both parties were successful in their application, they must each bear the cost of their own filing fee.

### Conclusion

The landlord is entitled to a monetary award as follows:

<b>Item</b>	<b>Amount</b>
Replacement of glass stove top	\$634.15
Replacement of hood fan and microwave	381.93
Broken sink and faucet	378.00
Damage to hallway, closet and moulding	637.50
Replacement of Carpet	671.25
Broken entrance phone	31.00
Less Amount Due to Tenant	(-1,913.00)
<b>Total =</b>	<b>\$820.23</b>

The landlord is ordered to retain \$820.23 from tenant's security deposit pursuant to section 72 of the *Act* and to return the remaining \$179.77.

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: November 15, 2018

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Residential Tenancy Branch