



# 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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain the security deposit pursuant to section 72; and
- Reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, call witnesses and make submissions.

The tenant acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution under section 89.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- authorization to retain the security deposit pursuant to sec 72;
- reimbursement of the filing fee pursuant to Section 72?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed to the following facts. They entered into a residential tenancy agreement beginning July 31, 2015. Rent was \$3,700.00 a month payable on the first of the month. The tenant provided a security deposit of \$1,750.00 at the beginning of the tenancy which is held by the landlord. The tenant has not provided the landlord written authorization to retain the security deposit. The tenant vacated the unit on July 31, 2018. Shortly afterwards, the tenant provided his forwarding address to the landlord. The landlord applied for dispute resolution on August 8, 2018, within 15 days of receiving the forwarding address.

The landlord submitted a copy of the tenancy agreement evidence.

The parties conducted a condition inspection at the time of moving in and the landlord submitted a copy of the report as evidence. The report indicated the stove was in good working order. The report is silent regarding shelves. No condition inspection on moving out took place. The landlord submitted evidence of her efforts to do a condition inspection when the tenant vacated, and that the tenant failed or refused to attend.

The landlord sought a monetary order for the following items, damage calculated as indicated:

ITEM	AMOUNT
Stove - replacement	\$1,322.12
Two shelving units (\$100.00 each)	\$200.00
Filing fee reimbursement	\$100.00
<b>Total</b>	<b>\$1,622.12</b>

The landlord testified the tenant was responsible for a significant crack in the glass top of the stove. She said she conducted inquiries and learned that the stove top was irreparable; as well, the stove top could not be replaced on its own without replacing the entire unit. The landlord therefore had to replace the stove at a cost of \$1,322.12. The landlord submitted a receipt for the replacement appliance in that amount. The landlord stated she did not know when the appliance had been purchased as it was in the house

when she bought the property in 2014. She estimated the appliance was one year old at that time so that it was five years old at the end of the tenancy.

In support of her claim, the landlord relies upon the condition inspection and the receipt for replacement.

The tenant denied responsibility for this claim. He acknowledged that he was responsible for a small piece which had broken off a corner of the stove top but stated the stove was functioning well at the end of the tenancy. He denied there was any major damage during the tenancy to the stove top and the damage was no more than normal 'wear and tear'. He stated he was not responsible for the decision of the landlord to replace a functioning stove.

The landlord testified that she loaned the tenant two shelving units which he did not return. The landlord estimated the shelving units were 1 year old at the time the tenancy began three years ago, making them about four years old. As they were used when she loaned them to the tenant, the landlord claimed reimbursement of one-half of the replacement cost, being \$200.00 in total. The landlord did not submit a receipt for the purchase of the shelving units. The landlord has not replaced the shelving units. She submitted a photo which she stated was of a similar shelving unit in a home hardware store showing a price of \$218.00.

The tenant stated the landlord gave him the shelves; she did not loan them to him. He acknowledged taking the shelves when he vacated the unit as the landlord gave them to him. He denies the landlord is entitled to any compensation for the shelving units.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant

bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find the landlord has established that the claimed damage or loss occurred. I also find that the tenant caused some the damage for which compensation is claimed.

In considering the monetary amount or value of the damage or loss, the landlord did not provide evidence of the age of the home and its various appliances including the stove. The landlord did not submit any evidence as to the age of the shelving units.

*Residential Tenancy Policy Guideline #1* explains,

*The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

*The tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear...or neglect by the tenant.*

In determining damages related to repair and replacement costs for building elements, I have considered the *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

*Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

*Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". That evidence may be in the form of work orders, invoices or other documentary evidence.

I will consider each of the landlord's claims in turn.

#### *Appliance – Stove*

The parties disagreed on the extent of the damage caused by the tenant. The tenant stated the damage, a broken corner of the stove top, was insignificant. The landlord stated the stove top would not work and could not be replaced, thereby necessitating the replacement of the entire appliance.

The landlord has submitted no evidence regarding the age of the original unit. She has not submitted pictures of what the appliance looked like at the beginning or the end of the tenancy. She has submitted no evidence, such as a work order, showing efforts to repair. I find I cannot ascertain the useful life of the appliance pursuant to the Guideline, whether repair of the appliance was possible, and whether its replacement was necessary.

However, I find the tenant used the stove, admitted to damaging the top, and caused damage beyond normal 'wear and tear'.

Section 32 of the *Act* requires the tenants to repair damage caused by the tenants' actions or neglect. The section states [*emphasis added*]:

(2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

(3) *A tenant of a rental unit **must repair damage** to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

*Residential Tenancy Policy Guideline 16 states that I may consider nominal damages as an award to the landlord in cases where the landlord has not established that an item has a remaining useful life under the Guideline. The Guideline states in part:*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

Based on the evidence submitted, the uncertainty of mitigation and the absence of evidence, I award the landlord nominal damages in the amount of \$350.00.

#### *Shelving Units*

Based on the evidence submitted, the failure of the landlord to replace the item, the absence of evidence regarding age and original cost, and the uncertainty about whether the units were a gift or a loan, I award the landlord nominal damages in the amount of \$50.00 per unit for two units, being a total of \$100.00.

#### *Summary of Award*

As the landlord has been successful in her claim, I award the landlord reimbursement of \$100.00 for the filing fee.

I award the landlord for compensation for repairs for damages calculated as follows:

ITEM	AMOUNT CLAIMED	AMOUNT AWARDED
Stove - replacement	\$1,322.12	\$350.00
Two shelving units	\$200.00	\$100.00
Filing fee reimbursement	\$100.00	\$100.00
<b>Total</b>	<b>\$1,622.12</b>	<b>\$550.00</b>

As the landlord holds the security deposit in the amount of \$1,750.00, the landlord may deduct the award of \$550.00, calculated as follows:

ITEM	AMOUNT CLAIMED
Security deposit held by landlord	\$1,750.00
Less monetary award	(\$550.00)
<b>Balance of Security Deposit</b>	<b>\$1,200.00</b>

The landlord must pay the balance of the security deposit, **\$1,200.00**, to the tenant, on or before December 31, 2018.

To enforce this award, I issue the tenant a monetary order in the amount of **\$1,200.00** to be served upon the landlord in the event the landlord does not reimburse the balance of the security deposit on or before December 31, 2018.

### Conclusion

The tenant is entitled to a monetary order in the amount of \$1,200.00. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to 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: December 07, 2018

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Residential Tenancy Branch