



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### 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 rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord's agent (the landlord) and Tenant R.S. (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) was sent to each tenant by way of Canada Post Registered Mail on December 07, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings and Tenant R.S. confirmed receipt. In accordance with section 89 of the *Act*, I find that Tenant R.S. is duly served with the Application and in accordance with sections 89 and 90 of the *Act*, I find that Tenant R.C. is deemed served with the Application on December 12, 2018.

The landlord testified that the evidence was sent to each tenant by way of Canada Post Registered Mail on December 14, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings and Tenant R.S. confirmed receipt. In accordance with section 88 of the *Act*, I find that Tenant R.S. is duly served

with the evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant R.C. is deemed served with the evidence on December 19, 2018.

Tenant R.S. (the tenant) confirmed that they did not submit any evidence.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on January 01, 2016, with a monthly rent of \$925.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit of \$462.50.

The landlord also provided in evidence:

- A copy of a Condition Inspection Report completed at the beginning of the tenancy with the tenant's signature indicating that they agree that the report represents the condition of the rental unit. The report only mentions stains on the bathroom countertop and scratches on living room floor;
- The tenant has indicated that they do not agree that the report represents the condition of the rental unit at the move-out inspection performed on November 30, 2018. The report indicates burn marks in bedroom floor and the kitchen countertop. The report also indicates that the hallway bi-fold and patio tracks are broken. The tenant's forwarding address is written on the report but the tenant has not signed the report;
- A copy of charge analysis for the move out indicating \$340.00 for the damaged countertop, \$250.00 for the damaged floor, \$70.00 for the damaged closet and \$100.00 for the patio track for a total of \$760.00;
- Copies of pictures of the various damage from within the rental unit;
- A copy of list of the repairs done to the rental unit with the associated costs showing the flooring laminate labour at \$325.50 and the material at \$205.80 for a total of \$531.30. The list shows the labour for the kitchen countertop at \$236.25 and \$171.99 for the materials for a total of \$408.24. The list shows a total of

\$90.06 for the hallway bi-fold (closet) labour/materials as well as \$87.52 for patio curtains supplied and installed with all of the above including taxes;

- A copy of an invoice for a contracting company which indicates the costs of the labour charged for the repairs that the landlord has performed for the rental unit;
- A copy of a receipt for the hallway bi-fold in the amount of \$52.29;
- A copy of an invoice for a kitchen countertop for the rental unit in the amount of \$171.99;
- A copy of an invoice for laminate and underlay in the amount of \$205.80; and
- A copy of a Monetary Order Worksheet detailing the landlord's monetary claim as follows:

<b>Item</b>	<b>Amount</b>
laminate	\$250.00
Kitchen countertop	408.24
Hallway bi-fold	90.06
Patio curtains	87.52
<b>Requested Monetary Order</b>	<b>\$835.82</b>

The landlord stated that the total monetary award being sought for damages was \$760.00 as indicated on the Application and charge analysis. The landlord confirmed that no amendment had been submitted.

The landlord submitted that they performed a condition inspection with the tenant at the end of the tenancy but that the tenant refused to sign the Condition Inspection Report. The landlord stated that there are damages as a result of the actions of the tenants that are beyond reasonable wear and tear such as burn marks on the kitchen countertop, which had to be replaced. The landlord testified that the countertop was last installed approximately five years ago and that they were only seeking to recover \$340.00 as indicated on their initial charge analysis.

The landlord submitted that the laminate floor in one of the bedrooms also had burn marks for which they were only seeking \$250.00 for as it was installed approximately five or six years ago.

The landlord stated that they were seeking \$70.00 for the replacement of the hallway bi-fold which the tenants damaged as indicated on the report and \$87.52 for a patio curtain to replace the blinds which were also damaged by the tenants. The landlord testified that the clips in the blinds were broken which was likely caused by the tenants going out

onto the balcony without opening the blinds. The landlord testified that they could not just replace the clips and so they decided to replace with a cheaper option in patio curtains.

The tenant confirmed that they participated in the condition inspection but did not sign the report due to their disagreement about the kitchen countertop. The tenant testified that the burn marks on the countertop were there before they moved in but were not noted on the Condition Inspection Report. The tenant admitted to the burn marks on the floor as being a result of the tenancy as well as the damaged hallway bi-fold and did not dispute the damage to the blinds.

The landlord responded that the tenant had three days to report any issues that were found after initially signing the Condition Inspection Report and that the tenants had never reported any issues with burn marks.

### Analysis

Section 38 of the *Act* indicates that a landlord, upon receiving the tenant's forwarding address, must either repay the security deposit to the tenant or make an application for dispute resolution within 15 days of the tenancy ending. As the tenancy ended on November 30, 2018, and the landlord made their Application on December 06, 2018, I find that the landlord made their Application within 15 days of the tenancy ending pursuant to section 38 of the *Act*.

Section 35 of the *Act* establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report and both the landlord and the tenant must sign the condition report.

I find that the landlord has completed the condition inspection with the tenant at the beginning and the end of the tenancy. I further find that the landlord has signed the report on both occasions and that the tenant's failure to sign the Condition Inspection Report at the end of the tenancy does not invalidate the report. I find that the landlord has fulfilled their obligations in accordance to section 35 of the *Act*.

Section 37 of the *Act* states that at the end of the tenancy the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In the case before me, I find that the tenant has not provided any evidence that the burn marks on the kitchen countertop were there when they moved into the rental unit. Having reviewed the evidence and testimony, I find that the tenant did not provide any documentary evidence that they had addressed the burn marks with the landlord after they moved in and previous to moving out. I find that the tenant did not dispute the fact that the burn marks are there now and based on a balance of probabilities, I find that the kitchen countertop was damaged by the neglectful actions of the tenants

Based on the evidence and the affirmed testimony, I find that the tenants' actions caused damage in the rental unit beyond reasonable wear and tear to the bedroom floor, the hallway bi-fold and the patio blinds. I find that the landlord has provided evidence that they have incurred a loss for all of the above items and has given evidence of the actual amount required to be compensated for them.

*Residential Tenancy Policy Guideline #40* provides general direction on determining the general useful life of building elements. This guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances."

As per *Residential Tenancy Policy Guideline #40*, the useful life of countertops is 25 years. As the landlord testified that the countertops were approximately five years old, I

find their claim of \$340.00 to be reasonable considering that the countertops had another potential 20 years of useful life and I allow them to recover that amount.

As per *Residential Tenancy Policy Guideline #40*, the useful life of floors is 10 years. As the landlord testified that the floors were approximately five or six years old, I find their claim of \$250.00 to be reasonable considering that floors were at approximately half of their useful life and I allow them to recover that amount.

Having reviewed the evidence and affirmed testimony, I allow the landlord to recover the full amounts requested for the hallway bi-fold in the amount of \$70.00 and \$87.52 for the patio curtain as I find that the damage caused by the tenants for these items is beyond reasonable wear and tear. I find that the landlord has mitigated their damages by choosing to replace the blinds with a less expensive option.

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. Therefore, I award the full monetary amount claimed by the landlord in the amount of \$760.00 for damages to the rental unit.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord was successful in their application, they may recover the filing fee related to this application.

### Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover costs for damages, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
lamine	\$250.00
Kitchen countertop	340.00
Hallway bi-fold	70.00
Patio curtains	87.52
Less security deposit	-462.50
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$385.02</b>

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

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: February 14, 2019

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Residential Tenancy Branch