



# 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 pursuant to section 67, and
- reimbursement of the filing fee pursuant to section 72.

The landlord's son, J.C., appeared as a representative for the landlord. Both tenants appeared with their adviser, JD. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenants acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution and the landlord's evidence. I find the tenants were served in accordance with the *Act*.

### Preliminary Matter: Admissibility of Tenants' Evidence

The landlord objected that to the service of the tenants' evidence for the following reasons: (1) the tenants sent their evidence to the rental unit rather than the address the landlord designated as their address for service on the Notice of Hearing of Dispute Resolution; (2) the tenants sent their evidence by ordinary mail; and, (3) the landlord only received the evidence seven days before the hearing.

The tenants testified that they personally delivered their evidence to the concierge at the rental unit. The tenants testified that they delivered their evidence to the rental unit because the landlord had stated that they were moving into the rental unit after the tenants vacated the rental unit. The landlord acknowledged that they received the tenants' evidence at the rental unit seven days before the hearing. I find that the delivery of the evidence to the rental unit rather than the address stated for service is

sufficient service of the evidence pursuant to section 71(2)(c) since the landlord acknowledged receiving the evidence there. Accordingly, I find that the tenants' evidence is admissible in this matter.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit pursuant to section 67?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The parties agreed that the tenancy started approximately 11 years ago with rent of \$1,976.00 per month and a \$900.00 security deposit. The rental unit was an apartment. The parties completed a condition inspection report during the tenancy on September 21, 2013, six years after the tenancy started. Both parties stated that the condition inspection report dated September 21, 2013 did not reflect the condition of the rental unit on move in.

During the tenancy, the tenants testified that they replaced the fireplace tile and the fireplace enclosure. The tenants testified that this improved and modernized the rental unit. The tenants testified that the landlord was aware of the change and they liked the modification. The tenants also testified that they added a television mount above the fireplace.

The tenancy ended when the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenants moved out on November 3, 2018. The parties did a walkthrough around the rental unit and they agreed that a window in the living room was damaged. The parties agreed that the landlord could retain the security deposit to pay for the repairs to the living room window. The landlord did not make any further repair requests during the walkthrough and the parties did not complete a condition inspection report on move-out.

The landlord's son testified that he moved into the rental unit on November 26, 2018. He testified that when he moved in he noticed that one of the window panes in the kitchen had been removed. The landlord's son testified that he noticed condensation accumulating on one of the kitchen window panels. He testified that upon closer examination he could see that the inside glass panel had been removed. The landlord provided photographs of the window frame which appeared to show a missing window pane.

The tenants denied the damage to the kitchen window. They testified that the window was intact and undamaged when they moved out.

The landlord also complained that the tenants replaced wood transition strips in the rental unit without the landlord's consent. The tenants testified that the original wood transition strips wore out and the new strips were an improvement.

In addition, the landlord testified that a sliding mirror door was cracked. The tenants denied damaging the mirror door. They said the door was undamaged when they moved out.

The landlord also complained that the tenants replaced a light fixture without approval. The tenants testified that they replaced the original light fixture when it broke. The tenants testified that this was an improvement.

The landlord also complained that several door hinges were replaced and they were not installed properly. The tenants acknowledged this damage and they said that there were willing to repair the hinges.

Furthermore, the landlord complained that the bathroom was missing towel racks. The tenants testified that the towel racks were old and they fell off. The tenants testified that they removed the towel racks, patched the walls and painted the walls to fix this.

The tenants testified that all of the items that they replaced in the rental unit were the original fixtures that came with the property when it was built in 1999.

The landlord presented an estimate of \$1,333.11 from a hardware store for parts and labour to restore the fireplace to the original condition. The landlord also provided an estimate of \$1,142.27 from a glass company to replace the kitchen window.

The landlord provided a quote of \$3,517.50 from a home improvement contractor for the remainder of repairs. The quote stated that the estimate was for the following construction services:

- Replace glass panel on entrance closet bi-fold
- Repair (1) and replace (2) door and door jambs
- Install 3 wood transitions to replace metal ones
- Remove fireplace mantle and tile on LR side. Install new tile to match other side.

The quote stated that labour would cost \$2,150.00, materials would cost \$1,200.00 and taxes would cost \$167.50. The quote did not itemize the charges to the specific work tasks proposed.

### Analysis

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.

Each of the landlord's claims is addressed:

### *Kitchen Window*

Based on the photographs provided by the landlord, I am satisfied that the tenants have damaged a pane from the kitchen window. I am also satisfied that the landlord has provided an estimate showing that the replacement cost of the window is \$1,142.27.

However, the kitchen window was not a new window. *Residential Tenancy Policy Guideline* No. 40 states that the useful life of building elements can be considered when assessing damages. Specifically, *Residential Tenancy Policy Guideline* No. 40 state:

...the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. 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* No. 40 states that the useful life of windows is 15 years. The tenants testified that the apartment was built in 1999 and neither party presented any evidence that the window was not original. Accordingly, I find that kitchen window was 19 years old at the end of the tenancy. As such, the kitchen window has already exceeded its useful life. However, although window has exceeded its useful life, the window could have continued to function for some future period if had not been damaged by the tenants. Based on the age of the windows, I find that the kitchen had a remaining value of 25% of the value of new windows. Accordingly, I will award the landlord 25% of the replacement cost of the kitchen window, being \$285.57 (25% of \$1,142.27)

### *Transition Strips*

I am satisfied that the tenants replaced transition strips without the permission of the landlord. *Residential Tenancy Policy Guideline* No. 1 states that tenants are responsible for restoring any changes to the rental unit which the landlord did agree to. Specifically, *Residential Tenancy Policy Guideline* No. 1 states:

## RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Accordingly, I find that the tenants are responsible for the costs of restoring the transition strips. However, the landlord did not provide any itemized estimates, invoices or testimony regarding the cost of replacing the transition strips. The landlord only provided one estimate which aggregated numerous repair claims without providing any specific itemizations. As such, I am not satisfied that the landlord has provided sufficient evidence to prove the actual monetary loss he has sustained. In the absence of satisfactory evidence of the restoration costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline No. 16* defines nominal damages as:

“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.

In this matter, an award of nominal damages is appropriate because the landlord has established that the tenant has made unauthorized changes to the transition strips but the landlord has failed to provide sufficient evidence of the amount of their monetary loss. In these circumstances, I award the landlord nominal damages of \$50.00 to replace the transition strips.

### *Sliding Mirror*

The landlord testified that the tenants damaged the mirror door during the tenancy and the tenants denied this. However, the crack shown in the landlord's photographs was very noticeable and obvious. I find that if that crack had existed at the time of the walkthrough on November 3, 2018, then this visible damage would have been likely been noted and discussed. Since this large crack was not noticed by the parties on the walkthrough, I find that, more likely than not, this crack developed after the tenancy ended. Accordingly, I dismiss the landlord's request for compensation for the cracked mirror door.

### *Fireplace*

The parties both testified that the tenants replaced the fireplace tile and the fireplace enclosure without the landlord's permission. As such, the tenants are responsible for the costs of restoring the fireplace pursuant to *Residential Tenancy Policy Guideline* No. 1. The landlord submitted an estimate of \$1,333.11 to restore the fireplace to the original condition. However, the fireplace was 19 years old at the end of the tenancy. *Residential Tenancy Policy Guideline* No. 40 states that the useful life for tiles is 10 years. As such, the fireplace enclosure and tiling has already exceeded its useful life. However, I find that fireplace tiling would have likely still been functional the tenants had not removed it so I will award the landlord 25% of the replacement cost of the fireplace tiling and enclosure, being \$332.28 (25% of \$1,333.11)

#### *Television Mount*

I am satisfied that the tenants left the television mount without the permission of the landlord. The tenants must reimburse the landlord the cost of removing the television mount pursuant to *Residential Tenancy Policy Guideline* No. 1. However, the landlord did not provide sufficient evidence of the cost of removing the television mount so I grant the landlord nominal damages of \$100.00.

#### *Light Fixture*

I am satisfied that the tenant replaced the light fixture without the landlord's permission. However, the landlord did not provide sufficient evidence regarding the replacement cost of the light fixture so I grant the landlord nominal damages of \$50.00.

#### *Door Hinges*

The tenants acknowledged that the hinges were damaged but the landlord did not provide sufficient evidence regarding the replacement cost of the hinges so I grant the landlord nominal damages of \$50.00.

#### *Towel Racks*

The tenants acknowledged that the towel racks were removed but the landlord did not provide sufficient evidence regarding the replacement cost of the towel rack so I grant the landlord nominal damages of \$50.00.

Since the landlord has prevailed in this matter, I grant the landlord's request for reimbursement of the filing fee.

Accordingly, I order the tenant to pay the landlords the sum of \$1,017.85, as calculated below.

<u>Item</u>	<u>Amount</u>
Kitchen window	\$285.57
Transition strips	\$50.00
Fireplace	\$332.28
Television mount	\$100.00
Light fixture	\$50.00
Door hinges	\$50.00
Towel rack	\$50.00
Filing fee	\$100.00
Total	<b>\$1,017.85</b>

### Conclusion

I grant the landlord a monetary order in the amount of **\$1,017.85**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court 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: April 8, 2019

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Residential Tenancy Branch