



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDL MNDCL MNSD FF

### **Introduction:**

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on May 23, 2019. The landlord and witnesses, including an interpreter, attended the hearing and gave sworn testimony. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that they served the Application for Dispute Resolution dated March 30, 2019 on the tenants by registered mail. The postal service information showed Notices were left for both tenants on April 4<sup>th</sup> and 5<sup>th</sup> but the female tenant refused the mail on April 8, 2019 and the male tenant never picked his up. I find the documents were legally served pursuant to section 89 of the Act and deemed to be received pursuant to section 90 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

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

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

The tenant did not attend the hearing although deemed to be served with the Application/Notice of Hearing. The landlord and witnesses attended and were given opportunity to be heard, to present evidence and to make submissions. The landlord

stated that the tenancy commenced November 1, 2018, that monthly rent was \$3300 and a security deposit of \$1650 was paid.

The landlord provided evidence that due to a neighbour's complaint, police attended the residence on November 5, 2018 and arrested some persons who exited the house. The Police returned with a warrant to search the property on November 7, 2018 which was issued based on reasonable grounds for believing that firearms, controlled drugs and rifles were present on the property. Much damage was found and the female tenant signed an agreement to fix the damage by November 25, 2018 and agreed to move out on December 31, 2018. She told the landlord that she had given the key to a "T." on November 3, 2018 and he had an argument with some women. During the police search on November 7, 2018, the door was broken and ceiling damage occurred. The landlord provided evidence of a signed agreement by the male tenant also to fix the damage by November 25, 2018 at the tenants' cost and to vacate by December 31, 2018. The damage was never repaired by the tenants.

The landlord claims as follows:

1. \$535.21: Unpaid gas bill; invoice in evidence
2. \$210.00: emergency repair front door; invoice provided
3. \$1837.50: to replace faucet and garburator; I note \$350 of this was to replace the faucet, \$400 to replace the garburator and \$1000 to clean plus GST of \$87.50.  
The landlord said the house was built in 1979 and he did not know the age of the faucet and garburator. A condition inspection report and photographs were provided as evidence of the need for cleaning.
4. \$126: to fix the stove door
5. \$2000 for a cabinet removed by the tenants; there was no invoice but the landlord said he had bought it in 2016 or 2017 and paid about \$3500 new.
6. \$800: Surveillance camera damage; no invoice but got oral quote to repair
7. \$10,111.50: quotation for house repairs/replacements. To replace the house door is quoted as \$3450 and the rest is replacing, repairing ceilings and vents and disposing of garbage. The landlord said the door may have been original or may have been done in renovations by a previous owner.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis:**

I find the evidence is that their tenancy agreement provided the tenants were to pay for their utilities but when they left, they owed \$535.21 for their use of gas. I find the landlord entitled to recover this amount as invoiced.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, **that it is beyond reasonable wear and tear** and the cost to cure the damage. To receive compensation, I find the landlord must prove all four elements as set out in section 7 of the Act (above). I find the landlord's evidence credible that this tenant's behaviour caused the damage, that much of it was caused within the first month of the tenancy when an altercation occurred between some guests of the tenant to whom she had provided a key.

Section 32 of the Act sets out the duties of landlords and tenants. Section 32 (3) provides a tenant must repair damage to the rental unit which is caused by the actions or neglect of the tenant or a person permitted on the property by them. I find the tenant violated this section of the Act by not repairing damage caused by them or their guests and this caused the landlord to suffer loss. I find them responsible to compensate the landlord for some of his losses as set out below

I find the landlord entitled to recover \$210 for the emergency repair of the front door, \$126 for the fix of the stove door, \$6661.50 for repairs of ceilings, vents, crown moulding and disposing of garbage as invoiced by H.S. I find them also entitled to recover \$1000 for housecleaning as invoiced by D.T. Inc. I find all of these items were supported by the condition inspection report and invoices

However, I find insufficient evidence of the age of the garburator and faucet and I consider its replacement may have been necessary due to reasonable wear and tear for

which a tenant is not responsible.. *Residential Policy Guideline 40* assigns a useful life to elements in rented premises to clarify reasonable wear and tear. Plumbing fixtures are assigned a useful life of 15 years. I find the evidence is the house was 39 years old when the tenants vacated and I find insufficient evidence that the faucet and garburator were more recent or had ever been replaced. Therefore, I find the tenants not responsible to compensate the landlord for the \$750 for the new kitchen faucet and garburator as they were beyond their useful life. Likewise, I find doors are assigned a useful life of 20 years and the broken door may have been at the end of its useful life so I find the landlord is not entitled to the compensation claimed of \$3450 for its replacement. I dismiss this portion of his claim.

In respect to the cabinet removed by the tenant, I find insufficient evidence of the cost of this item so that element of section 7 has not been proven. If the landlord purchased it as he stated in 2016 or 2017 for \$3500, I find he should have been able to provide an invoice or other proof of actual cost. As he has not proved the necessary element of cost, I dismiss this portion of his claim. I also find insufficient evidence of the damage to the surveillance system and the cost to repair it. I dismiss this portion of his claim.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

### **Calculation of Monetary Award:**

Unpaid gas bill	535.21
Repair front door, emergency	210.00
Fix stove door	126.00
Cleaning of home by D.T. Plus \$50 GST	1050.00
Repairs of home & garbage disposal as invoiced by H.S.	6661.50
Filing fee	100.00
Less security deposit	-1650.00
<b>Total Monetary Order to Landlord</b>	<b>7032.71</b>

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: May 23, 2019

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Residential Tenancy Branch