



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 12, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package was served on the Tenant in person on April 12, 2019, and a further documentary evidence package was served on the Tenant in person on July 18, 2019. The Tenant acknowledged receipt of both packages.

The Tenant submitted documentary evidence in response to the Application. The Tenant testified it was served on the Landlord by leaving a copy in his mailbox on August 1, 2019. The Landlord acknowledged receipt of the 2 pages of evidence on August 2, 2019.

Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The tenancy commenced on August 1, 2011, and ended on March 31, 2019, pursuant to an order of possession issued on March 14, 2019. During the tenancy, rent in the amount of \$1,175.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$530.00, which the Landlord holds.

The Landlord's claims are set out on a Monetary Order Worksheet, dated July 17, 2019, which sets out claims totalling \$14,922.05. However, the claims set out in the Application are for \$11,000.00. The parties were advised that the Rules of Procedure confirm that a claim is limited to what is stated in the application, unless the claim is amended pursuant to the *Act*. In this case, the Application was not amended, and the Landlord's claim is therefore limited to \$11,000.00. The Landlord accepted this determination.

A Condition Inspection Report was submitted into evidence. The move-in condition inspection took place on August 1, 2011. The Tenant signed the document and was in agreement with it. The move-out condition inspection took place on April 1, 2019. The Tenant did not attend the move-out condition inspection and did not sign the document to indicate his agreement with it.

First, the Landlord claims \$1,175.00 in liquidated damages, which is provided for in paragraph 5 of the tenancy agreement submitted into evidence. The Tenant did not dispute this aspect of the Landlord's claim.

Second, the Landlord claims \$833.14 to replace a fridge. The Landlord testified the fridge was new in 2010, at which time the Landlord completed a full renovation. The Landlord testified that the fridge stopped working in or about August 2018 because the Tenant did not take proper care of it. The Landlord replaced the fridge at that time. A receipt was submitted in support. In addition, the Landlord submitted a receipt for steps taken to order, set up, and install the new fridge. The Landlord also submitted 3 photographs of the inside of the fridge, which depicted food stains throughout.

In reply, the Tenant testified the fridge had been making irregular but occasional noises for about 18 months before it "died". He acknowledged the fridge was replaced in August 2018 but questioned why the Landlord did not raise the issue until after the tenancy ended.

Third, the Landlord claimed \$526.17 to replace kitchen cabinet doors (\$167.77) and kitchen countertop (\$358.40). With respect to the cabinet doors, the Landlord referred to photographs of the damaged doors, which he testified were located close to the oven. He suggested the heat of the oven caused the damage but suggested the Tenant was at fault. The Landlord also submitted a receipt for the cabinet doors in the amount claimed.

With respect to the countertops, the Landlord referred to a photograph which depicts some knife marks. In support, the Landlord submitted a hand-written quote he prepared based on a quote given over the phone.

In reply, the Tenant echoed the Landlord's testimony that he believed the damage to the cabinets was due to delamination caused by heat from the oven, and age. With respect to the damage to the countertops, the Tenant acknowledged some small scratches but suggested these were reasonable wear and tear over the course of the tenancy. The Tenant also testified he always used a cutting board.

Fourth, the Landlord claimed \$554.55 to purchase cleaning chemicals and to rent a power washer. The Tenant did not dispute this aspect of the Landlord's claim.

Fifth, the Landlord claimed \$3,845.60 to replace carpet and linoleum throughout the rental unit. The Landlord testified the amount claimed was based on 2 hand-written quotes he obtained from Home Depot, which were submitted into evidence. The Landlord testified that he decided to replace the flooring with “planks” that he hoped would be more durable. Although he testified this flooring cost “a lot more”, he did not provide an invoice and was unable to testify to the actual amount paid. In further support, the Landlord submitted multiple photographs of flooring throughout the rental unit into evidence. It depicted discoloured linoleum and very dirty and stained carpets.

In reply, the Tenant testified that he believes the discoloured linoleum is due to erosion of a clear “top coat”, and due to age. The Tenant testified that the carpet was professionally cleaned “several years ago”. Although he intended to clean the carpet when he vacated the rental unit, he did not have time to do so.

Sixth, the Landlord claimed \$2,350.00 to paint the rental unit. In support, the Landlord submitted photographs depicting discolouration, mold, and damage in various rooms throughout the rental unit. The photographs also depicted children’s art on a wall. In addition, the Landlord submitted a quote for the amount claimed, which the Landlord testified he paid.

In reply, the Tenant testified that he has discussed this with other landlords who paint every 4-5 years. He submitted that the paint was beyond its useful life.

Seventh, the Landlord claimed \$265.59 to replace a heater and print photographs for the Landlord’s documentary evidence. The Tenant did not dispute this aspect of the Landlord’s claim.

Eighth, the Landlord claimed \$47.00 for fees paid to dispose of garbage left behind by the Tenant. The Tenant did not dispute this aspect of the Landlord’s claim.

Ninth, the Landlord claimed \$2,625.00 to repair and paint the sundeck. In support, the Landlord submitted a number of photographs of the sundeck before being washed. The photographs depicted dirt and rust stains. In addition, the Landlord submitted photographs of the sundeck after it was washed. The photographs depicted some rust stains that persisted. The Landlord also submitted an estimate he received over the phone and acknowledged it was not based on a site visit. However, the Landlord testified he has not yet done the work to the deck.

In reply, the Tenant testified that he cleaned the deck every year but had not yet done so prior to the end of the tenancy. The Tenant also suggested the Landlord's proposal for repairs and paint is excessive, noting the rental property as a whole is aging.

Tenth, the Landlord claimed \$2,700.00 for work he performed in relation to the rental unit. This aspect of the claim was based on 108 hours of work at a rate of \$25.00 per hour. The claim was summarized on a hand-written table submitted into evidence.

In reply, the Tennant acknowledged that the Landlord had to do the work described on the table. However, he submitted that the number of hours claimed were excessive.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$1,175.00 in liquidated damages, the Tenant did not dispute this aspect of the claim. Therefore, I grant the Landlord a monetary award in the amount of \$1,175.00.

With respect to the Landlord's claim for \$833.14 to replace a fridge, I find there is insufficient evidence before me to grant the relief sought. I accept that the fridge was replaced by the Landlord in August 2018. However, I find there is insufficient evidence before me to conclude the Tenant was responsible, despite the poor condition of the replacement fridge at the end of the tenancy and the Landlord's general assertion that the Tenant did not take proper care of the rental unit. Therefore, I find that this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$167.77 to repair cabinet doors, I find there is insufficient evidence before me to grant the relief sought. Despite his insistence that the Tenant was at fault, the Landlord acknowledged in his testimony that the damage was likely caused by heat from the oven. Therefore, I find that this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$358.40 to replace damaged kitchen countertops, I find there is insufficient evidence before me to grant all of the relief sought. The Landlord's evidence in support of the value of the loss was provided on a hand-written document prepared by the Landlord and was based on a quote given to him over the phone. Therefore, I find there is insufficient evidence before me to establish the value of the Landlord's loss. However, the Tenant acknowledged that some of the damage was caused during the tenancy, attributing it to normal wear and tear.

Policy Guideline #16 confirms and arbitrator may award nominal damages when 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 case, I am satisfied that the countertops were damaged during the tenancy and that the Landlord suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages for damage to the countertops in the amount of \$100.00.

With respect to the Landlord's claim for \$554.55 to purchase cleaning chemicals and to rent a power washer, the Tenant did not dispute this aspect of the Landlord's claim. Therefore, I grant the Landlord a monetary award in the amount of \$554.55.

With respect to the Landlord's claim for \$3,845.60 to replace carpet and linoleum throughout the rental unit, I find there is insufficient evidence before me to grant the relief sought. The Landlord submitted 2 quotes but testified during the hearing that he decided to replace the flooring with "planks". As a result, I find the quotes provided give no guidance with respect to the value of the Landlord's loss. I find it is not sufficient to merely assert that the actual product used cost more than the flooring referred to in the quotes. However, I accept that the carpeting in particular was stained and damaged during the tenancy. Applying Policy Guideline #16, referred to above, I find the Tenant breached sections 32 and 37 of the *Act* and that the Landlord suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages for damage to the flooring in the amount of \$350.00.

With respect to the Landlord's claim for \$2,350.00 to paint the rental unit, I find there is sufficient evidence before me to grant the relief sought. As depicted in the photographs submitted, there was considerable damage to the walls that does not appear to have been addressed by the Tenant during the tenancy. I find the damage is beyond what would be considered reasonable wear and tear during a tenancy. While I accept that the damage may not have been intentional, I have no difficulty finding it was negligent. Accordingly, I reject the Tenant's assertion that the Landlord was obligated to paint the rental unit because the paint was beyond its useful life as articulated in Policy Guideline #40. Therefore, I find the Landlord has established an entitlement to a monetary award to paint the rental unit in the amount of \$2,350.00.

With respect to the Landlord's claim for \$265.59 to replace a heater and print photographs for the Landlord's documentary evidence, the Tenant did not dispute this aspect of the Landlord's claim. Therefore, I grant the Landlord a monetary award in the amount of \$265.59.

With respect to the Landlord's claim for \$47.00 for fees paid to dispose of garbage left behind, the Tenant did not dispute this aspect of the Landlord's claim. Therefore, I grant the Landlord a monetary award in the amount of \$47.00.

With respect to the Landlord's claim for \$2,625.00 to repair and paint the sundeck, I find there is insufficient evidence before me to grant the relief sought. The Landlord's evidence confirmed that much of the dirt and stains were removed by washing. In addition, the Landlord's evidence of the value of his loss was based on an estimate provided over the phone, and the Landlord acknowledged the work has not been completed. Therefore, I find there is insufficient evidence of a breach of the tenancy agreement or the *Act*, or that the Landlord suffered a loss. Therefore, this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$2,700.00 for work he performed in relation to the rental unit, I note the Tenant acknowledged the work needed to be completed. However, I agree that the amount claimed is excessive in the circumstances. In the circumstances, I find it is reasonable to grant the Landlord \$1,500.00 (60 hours x \$25.00/hour).

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,912.14, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Liquidated damages:	\$1,175.00
Kitchen countertops (nominal):	\$100.00
Cleaning chemicals/power washer:	\$554.55
Flooring (nominal):	\$350.00
Painting:	\$2,350.00
Replace heater/print photographs:	\$265.59
Garbage disposal:	\$47.00
Landlord's labour:	\$1,500.00
Filing fee:	\$100.00
LESS security deposit:	(\$530.00)
<b>TOTAL:</b>	<b>\$5,912.14</b>



Conclusion

The Landlord is granted a monetary order in the amount of \$5,912.14. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 26, 2019

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Residential Tenancy Branch