



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDL-S, FFT

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$1,932.18 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented by its residential leasing manager ("**ED**"). The tenant appeared on her own behalf. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

ED testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. I find that the tenant has been served with the required documents in accordance with the Act.

The tenant did not provide any documentary evidence in support of her opposition to the landlord's application.

### Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order of \$1,932.18;
- 2) recover its filing fee; and
- 3) apply the security deposit against any monetary order made?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2015. Monthly rent was \$1,674.10 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$787.50. The landlord still retains this deposit. The tenant vacated the rental unit on May 27, 2019.

The parties conducted a move-in condition inspection report on July 25, 2015 (the **"Move-In Report"**) and a move-out condition inspection report on May 27, 2019 (the **"Move-Out Report"**).

The landlord claims that the tenant damaged the rental unit as follows:

<b>Item Damaged</b>	<b>Cost to Repair</b>
Damage to stovetop	\$722.60
Damage to hardwood floors	\$842.08
Chip to manufactured quartz countertop	\$157.50
Damage to exterior door frame	\$105.00
Failure to adequately clean rental unit	\$105.00
<b>Total</b>	<b>\$1,932.18</b>

The landlord provided invoices in support of the amount of each of these damages.

The tenant agrees that she caused the damage to the stove and hardwood floor and does not dispute the costs associated with their repair.

### **Countertop**

The landlord entered a photograph of a chip to the edge of the quartz countertop. The damage is noted on the Move-Out Report. ED testified that it cost \$157.50 to repair and provided an invoice in support of this amount.

The tenant does not deny causing the chip. Rather, she argued that it should be considered ordinary wear and tear, and that she should therefore not be responsible for paying for its repair. She testified that she does not recall specifically chipping the countertop, but that it occurred while she was cooking.

### Exterior Door Frame

The landlord entered a photograph of the inner edge of the exterior front door frame. The edge has a number of chips in it. While this damage is noted in the Move-Out Report, the entry recording this damage appears to have been hand-written into the report during the move out. There is no check mark under the “code” column in the Move-In Report (as all other entries have) which I would expect to be present had the condition of the door frame been assessed at the time of the move-in.

The tenant denied causing any damage to the exterior door frame and was likely caused by passersby to the unit. She testified that the rental unit is located in a high traffic area. ED did not disagree. The tenant also argued that the exterior door frame does not form part of the rental unit, as it is not within the unit itself.

### Cleaning

The landlord alleges the following areas were not adequately cleaned, and provided the following photographs:

- floor and cabinets behind stove
- kitchen exhaust vent
- oven interior
- stained kitchen countertops
- bathroom ceiling vent
- bathtub
- toilet
- floor next to washer/dryer unit

The Move Out Report notes the following:

- Countertop – couple of stains
- Oven – stain to be removed
- Exhaust Hood and Fan – vents greasy
- Tub – dirty
- Bathroom Ceiling Fan – grill dirty

The Move-Out Report is silent as to the cleanliness of the toilet, behind the stove, and next to the washer and dryer.

ED testified that the landlord hired a cleaner to clean the rental unit, and that it cost \$105.00. The landlord submitted an invoice for this amount.

The tenant argues that she could not move the stove to get behind it to clean it, and that it was not on rollers. ED testified that it was on rollers.

The tenant testified that the space between the washer/dryer and the wall (the area which the landlord alleges was not sufficiently clean) was not accessible to her without moving the washer/dryer. ED gave no evidence to the contrary.

The tenant testified that she cleaned the toilet prior to moving out, and that it would often scale up as seen in the photo the landlord entered into evidence after 48 hours or so of cleaning. ED testified that the photograph of the toilet was taken the same day as the move out inspection but acknowledged that the alleged condition of the toilet was not recorded on the Move-Out Report.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord bears the onus to prove that it is more likely than not that the tenant caused the damage it alleges.

Section 37(2) of the Act states:

**Leaving the rental unit at the end of a tenancy**

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear;

At the end of the tenancy, a rental unit need not be in pristine condition, rather, reasonable wear and tear is permitted. Residential Tenancy Policy Guideline 1 states:

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 due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant. [emphasis added]

Countertop

I find that the chip to the countertop is not reasonable wear and tear. I find that the chip was not caused by natural deterioration that occurs due to the aging, where the tenant used the countertop in a reasonable way. Rather, I find that the chip was caused by the negligent action of the tenant, made in the course of her performing a routine action.

I accept the landlord's evidence as to the cost to repair the chipped countertop. I order that the tenant reimburse the landlord this cost.

### Exterior Door Frame

I find that the condition of the exterior door frame is not recorded on the Move-In Report. I find that the category of "Door Frame" was added to the Move-Out Report at the time the Move-Out Report was being made. I find that, as a result, the landlord cannot demonstrate the condition of the exterior door frame at the start of the tenancy.

In any event, as the exterior door frame is outside the rental unit and the rental unit is located in a high traffic area, I am not satisfied, on a balance of probabilities, that the tenant caused the damage to the door frame as alleged by the landlord.

As such, I decline to order that the tenant pay any amount to the landlord in relation to repairing the exterior door frame.

### Cleaning

Policy Guideline 1:

#### MAJOR APPLIANCES

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

Based on the evidence before me I am unable to say whether the stove or washer/dryer was on rollers, to allow the tenant access to the area beneath and beside these appliances that the landlord alleges were not cleaned. The landlord bears the onus to prove this. I find that it has not.

Additionally, there is no evidence before me that the landlord told the tenant how to move the stove or the washer/dryer without injuring herself. As such, I find that that the tenant is not responsible for cleaning behind or beside these appliances.

Notwithstanding its absence on the Move-Out Report, I accept ED's testimony that the photograph of the toilet was taken the same day as the move-out inspection, and that it depicts the condition of the toilet at the time of move-out.

I find that the remaining areas alleged by the landlord not to have been cleaned by the tenant were not cleaned to the level of cleanliness falls of "reasonably clean" as set out in section 37 of the Act.

Accordingly, I order that the landlord may recover 50% of its cleaning costs from the tenant.

#### Stovetop and Floors

As the tenant agreed to pay for these damages and did not dispute the amounts of the repairs put forth by the landlord, I order that the tenant reimburse the landlord the full cost of these repairs.

Pursuant section 72(1) of the Act, I find that landlord has been largely successful in its application, accordingly, it is entitled to recover its filing fee from the tenant.

Pursuant to section 72(2) of the Act, I order that the landlord may retain the security deposit in partial satisfaction of the monetary awards that I have made.

**Conclusion**

In summary, I order that tenant pay the landlord \$1,087.18, representing the following:

Damage to stovetop	\$722.60
Damage to hardwood floors	\$842.08
Chip to manufactured quartz countertop	\$157.50
Damage to exterior door frame	\$0.00
Failure to adequately clean rental unit	\$52.50
Filing Fee	\$100.00
Security Deposit credit	<del>-\$787.50</del>
<b>Total</b>	\$1,087.18

This order may be filed and enforced in the Provincial Court of British Columbia.

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: September 23, 2019

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Residential Tenancy Branch