



# 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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

KS attended as agent for the landlord (“the landlord”). Both tenants attended. The hearing process was explained, and parties were given an opportunity to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

The tenants acknowledged receipt of the landlord’s Notice of Hearing and Application for Dispute Resolution. The landlord acknowledged receipt of the tenant’s materials. No issues of service were raised. I find each party served the other in accordance with the *Act*.

At the outset, the parties agreed to amend the landlord’s name throughout as the tenants had mistakenly listed the agent’s name as the landlord’s

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

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

Throughout the hearing, I repeatedly reminded the landlord's agent KS not to interrupt or speak over the tenants when they were testifying. I observed that the agent KS spoke angrily and impatiently, continuing to interrupt the tenants as well as the arbitrator throughout the 85-minute hearing.

The parties entered into a tenancy agreement which began on May 1, 2016 and ended when the tenants vacated on June 30, 2019. Rent was \$1,271.25 monthly payable at the first of the month. A copy of the agreement was submitted.

At the beginning of the tenancy, the tenants provided a security deposit of \$575.00 which the landlord holds. Shortly after the tenants vacated, they agreed that they would reimburse the landlord for certain claimed damages in the amount of \$250.00; however, during the hearing, the tenants withdrew their consent to the application of any of the security deposit to any part of the landlord's claim saying that, while items may have been damaged during their tenancy, the damage was only normal wear and tear.

Accordingly, the landlord holds the security deposit without authorization from the tenants to retain any portion. The landlord brought this application within the 15-day period.

A copy of the condition inspection report on moving in and moving out as signed by the parties was submitted as evidence. The condition inspection report on moving in indicated the unit was in good condition in all relevant respects except as follows:

- The flooring was noted to have cracked tiles and damaged laminate; and
- Blinds were noted to be ripped.

The tenants stated that they were unfamiliar with the process of condition inspections and that they failed to record their observation on moving in that the unit was "old and falling apart".

All the items for which the landlord claimed compensation were noted as deficiencies on the moving out report. The tenants checked the section on the moving out report stating

they did not agree that the report “fairly resented the condition of the rental unit” because the damage noted was “already present” when they moved in.

The tenants vehemently deny that they damaged the unit beyond reasonable wear and tear. They testified to many problems throughout the tenancy which were reported to previous property managers representing the landlord. They repeatedly stated that the unit was in very poor condition. The tenants testified there were rats in the building that destroyed some of their furniture. They claimed the unit was falling to pieces.

For example, the tenants claimed that the rangehood and the stove never worked properly. The sink clogged repeatedly. Aging items, replacement of which are claimed by the landlord as compensation, were disintegrating or breaking down when the tenants moved in. The flooring did not properly adhere to the floor and needed to be “kicked” in place.

The landlord amended the monetary claim and clarified the landlord’s claim as follows for which the landlord submitted substantiating receipts or estimates as indicated:

ROOM	ITEM	AMOUNT	EVIDENCE
Kitchen	Oven handle	\$80.00	Maintenance receipt
	Rangehood	\$61.00	<i>Replacement cost</i> vendor new
	Cupboard drawer	\$60.00	Maintenance receipt
Bathroom	Towel rack	\$30.00	Replacement <i>estimate</i> new
Windows	Blinds	\$176.39	Replacement cost new
Doors	Stopper	\$10.00	Maintenance receipt
	Door handle	\$20.00	Maintenance receipt
Flooring	Hallway, 2 bedrooms	\$255.05	2/10 of replacement costs
Painting	Wall repair	\$60.00	Maintenance receipt
	<b>TOTAL</b>	<b>\$752.44</b>	

The “maintenance receipts” noted above were issued by the apartment building maintenance personnel and do not include itemization and calculation for out of pocket expenses and time. For example, with respect to the first item, the oven handle, the September 26, 2019 invoice from maintenance stated simply, “replaced broken stove handle, charge tenant \$80.00”.

As to the age of the items, the landlord stated that to the best of his knowledge the items were new when the unit was renovated in 2012. The landlord acknowledged he did not see the unit during the 2012 renovations, did not personally witness the

condition of the unit when the tenants moved in or out, and did not have direct knowledge of the age or condition of the items. The landlord submitted no evidence of the original cost of any of the items.

The landlord submitted a 26-page evidence package as well as about 60 photographs showing damage to the unit for each of the above. The landlord did not submit pictures of the unit at the time the tenancy began.

On June 26, 2019, the tenant sent a letter to the landlord stating that the landlord's proposed charges for damage were "unreal and unfair". The tenants point out: [in part, as written]

*"not much repairs was done in [apartment] before we moved in"...[Agent J] who was the managers at the time said that she was going to inform the office to get the tile fixed. We made multiple complains and calls, but nothing was done. When the new manager took over, we follow-up with the same complain but still nothing was done. To have you have blaming us and having it on the move out chargers is just ridiculous. [Stove handle] ... was broken when we moved in.*

*Your \$400.00 charge for painting is against the tenancy act.... [the flooring] wasn't in good condition when we got there and it wasn't new. The hardwood was in bad shape and tile was crack all over from kitchen to living room. If your staffs keep records both present and past managers will have our complaints noted. Same situation was with our bathroom sink. It took 2 years to have it change after multiples complaints. It was in terrible conditions. As I speak, there are repairs that was to be done more than a year that hasn't been done, but yet we paid our rent on time.*

The tenants submitted undated photographs purportedly of the unit when they moved in. The landlord denied that the photographs were taken on moving in. The tenants submitted a video of the unit on move out which shows the condition of the unit throughout.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings. The 85-minute hearing was contentious and included sharply divergent evidence.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 37(2) of the Act sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

*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,...*

The damage must be more than reasonable wear and tear. *Residential Tenancy Policy Guideline #1* explains,

*“The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site...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 neglect by the tenant.”*

In this case, the landlord has claimed for compensation due to damages/loss for damages listed in the table in the previous section.

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*.

Key to the landlord's claims is whether the landlord has established the second aspect of the above test, that is, that the damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement

In this case, the onus is on the landlord to prove the landlord is entitled to a monetary award for the items claimed.

I accept the landlord's submitted photographs in support of his testimony that the items were damaged as claimed when the tenants' vacated.

I will refer to each of the landlord's claims in turn:

*Kitchen – oven door handle*

The landlord claims \$80.00 for the cost of replacing the door handle on the oven. The landlord submitted a photograph of the door handle showing it was cracked when the tenants moved out.

In considering all the landlord's claims, I do not take into account the photographs the tenants submitted as supporting documentary evidence for the reason that the date of the photographs was not established by the tenants and the landlord refused to accept the photographs as representative of the condition of the unit on moving in.

In applying the four-part test to this case, I find the landlord meets the first requirement (above), that is, that the item was damaged when the tenants' vacated.

However, I find that the landlord has failed to meet the burden of proof on a balance of probabilities with respect to the second aspect of the landlord's claim, that is, that the tenants damaged the item. I reach this conclusion with respect to all items claimed by the landlord.

In reaching this conclusion with respect to the oven door handle, I have considered the testimony of the tenants that the item was cracked when they moved in. This directly contradicts the testimony of the landlord that the item was not broken when the tenants moved in.

In reaching my conclusion, I have considered the weight to be given to the condition inspection report on moving in, the tenants' testimony, and the landlord's testimony.

I acknowledge that the condition inspection report on moving in does *not* note the cracked handle and, also, that the damaged handle is noted on the moving out report. Taken at face value, the reports would seem to support the landlord's claim that the tenants damaged the item.

However, I accept as reasonable and plausible the tenants' explanation that they did not know about condition inspection on moving in, did not understand the significance of the document, and failed to accurately record every damaged item. I have also considered that the agent at the hearing was not personally present at the time of moving in. In all of the circumstances, I therefore give little weight to the condition inspection report on moving in.

Also, as mentioned, the tenants testified vehemently that all the items claimed as damaged by the landlord were in a damaged condition when they moved in. I give considerable weight to their testimony which I found articulate and believable. Their evidence is supported by their submitted video which the male tenant took at 1:00 AM on the date they moved out. The male tenant testified he took the video to illustrate that the tenants left the unit clean and to prevent the landlord's anticipated claim for "false" damages.

The video shows every room in turn. For example, the male tenant slowly and carefully showed the toilet, the kitchen cabinets (including the interior), the area behind the appliances – in short, every part of the unit. I observed that the unit appeared to be meticulously clean.

I also observed as follows: the unit appeared well worn, old and in poor condition. The kitchen cabinets looked somewhat functional, but dated and dilapidated. The blinds were bent and non-functioning; the accompanying narrative of the male tenant commented that the blinds were broken when they moved in and "there was nothing we could do". The floor was damaged with scratches and was chipped; connecting parts did not join well and the male tenant pushed parts into place to indicate how the flooring was not fitting together well.

In the circumstances, and for the reasons indicated, I give considerable weight to the tenants' explanation of the poor condition of the unit when they moved in as supported by the images of the unit described above.

I have considered the landlord's evidence that the unit was renovated in 2012 and in all material aspects, items were new and in good condition when the tenants moved in. However, in observing the visual evidence as set out above, I find it highly unlikely that the condition of the unit that I observed was caused during the tenancy. After examining the video, I find the damage appeared to be wear and tear over many more years of continuous and substantial use and it would be unreasonable to attribute the damage to the tenants solely.

I have also taken into account that the landlord has not provided any supporting evidence of the condition of the unit when the tenants moved in except for the condition

inspection report, to which I do not give much weight in view of the tenants' candid and believable evidence that they were unfamiliar with the process and did not record every damaged item. The landlord provided no photographs of the unit on moving in. The landlord did not provide supporting documentary evidence for the landlord's testimony that the unit was newly renovated in all material respects. The landlord's agent at the hearing was not present on moving in.

Taking into account all the evidence, I accept the tenants' testimony supported by the video evidence, that the unit was shabby, damaged and well-worn when they moved in. I accept their evidence that they did not damage the item as claimed by the landlord and that they subjected the item to only reasonable wear and tear.

I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of the landlord's claim. The landlord's claim in this regard is dismissed without leave to reapply.

#### *Rangehood*

The landlord claimed a reimbursement of the purchase price of a new rangehood.

In considering this aspect of the landlord's claim, I adopt the observations and conclusions I made above, which I will not repeat here.

I have reviewed the landlord's pictures of the rangehood. I observed a rangehood of an out-dated model with rust which appeared much older than the claimed age of 7 years. The landlord did not take into account the remaining useful life of the rangehood under the *Policy Guideline # 40 – Useful Life of Building Elements* and requested full reimbursement for the replacement cost.

For the reasons stated above, I do not give much weight to the condition inspection report on moving in which stated that the rangehood was working. For the reasons indicated, I accept the tenants' evidence that the rangehood did not work throughout the tenancy, that they complained about it, and the rangehood was never fixed. I find the landlord has not established the age of the rangehood.

I therefore find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of the landlord's claim and I dismiss the claim in this regard without leave to reapply.

*Remainder of the landlord's claims: cupboard drawer, towel rack, blinds, door stopper, door handle, flooring and wall repair.*

For the reasons stated above, I find the landlord has failed to meet the burden of proof on a balance of probabilities that the tenants were responsible for damaging these items



and I dismiss the landlord's claims without leave to reapply.

*Summary*

All the landlord's claims are dismissed without leave to reapply. As the landlord has been unsuccessful, the landlord is not entitled to reimbursement of the filing fee.

The landlord is directed to return the security deposit to the tenants.

Conclusion

The landlord's claims are dismissed without leave to reapply. The landlord is directed to return the security deposit to the tenants.

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: October 23, 2019

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Residential Tenancy Branch