



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MND-S, FF

### **Introduction**

This hearing was convened in response to an application by the landlord made August 08, 2019 for a monetary order pursuant to a claim against the security deposit of damage to the rental unit kitchen cabinetry. The landlord further sought recovery of the filing fee. Both parties attended the conference call hearing. There was no dispute in respect to service of the Notice of Hearing and application documents of this matter. Therefore, I am satisfied the tenant was served with the action against them in accordance with the Act. The parties provided testimony. The tenant acknowledged receiving the landlord's document / image evidence as provided to the proceeding. The tenant did not advance document evidence. The parties were provided with opportunity to mutually settle or resolve their dispute, to no avail. At the end of the hearing both parties testified they had provided all the relevant evidence they wished to present.

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

Is the landlord entitled to a monetary order in the amount claimed?

### **Background and Evidence**

The undisputed evidence is that the tenancy started September 01, 2017 and ended July 28, 2019. The payable rent under the written tenancy agreement was \$3900.00 per month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1950.00 of which the landlord returned \$1385.20 and retains the sum claimed in this dispute in the amount of \$564.80. The landlord provided a copy of the tenancy agreement. The parties agreed that at the start and end of the tenancy the parties conducted mutual condition inspections, of which the landlord provided a copy of the respective Condition Inspection Report (CIR).

The landlord claims the tenant is responsible for damage to corners of 2 adjoining upper kitchen cabinet doors. The landlord provided photo images before and after the 2-year tenancy respecting the claimed damage. The tenant does not dispute the damage to the cabinet doors and does not deny the damage occurred during the tenancy. The tenant is claiming that “poor design” of the cabinetry resulted in damage to the door corners. The tenant testified that throughout the tenancy the adjoining doors made contact and over time resulted in destruction of the door corners. The tenant further testified the construction of the doors as being poor quality, made of MDF (*medium density fibreboard*); and, that the layout of the cabinets, not as they would have designed them. The tenant also argued the landlord’s claim of \$464.80 for repairing the doors as being unmitigated. The landlord submitted a repair invoice stating repair to one door at \$50.00, a new constructed door at \$300.00 for the second door, and associated labour of \$65.00. The tenant questioned if the landlord had sought a less costly remedy to fix the doors or explored other options. The landlord explained the cabinetry was installed in 2008 and the constructed door was instead of replacing all doors with ones currently available, as the current door and their finish were no longer available, and therefore custom made.

It is undisputed that during the tenancy the tenant did not raise the issue they experienced with the doors. The landlord testified they did not receive notice to adjust or repair the doors during the tenancy.

### **Analysis**

*A copy of the Residential Tenancy Act, Regulations and other information are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

Under the Act, a party claiming loss bears the burden of proof on a balance of probabilities. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the test established by Section 7 is as follows,

1. *Proof the damage or loss exists,*
2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement.*
3. *Verification of the actual amount required to compensate for the claimed loss.*
4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Therefore, proving a claim in this matter requires establishing that damage occurred and was not instead a loss due to reasonable wear and tear. That the damage was a result of a breach of the tenancy agreement or *Act*; *and*, verification of the actual loss for damage claimed and proof that the party took reasonable measures to mitigate or minimize their loss.

I find it is undisputed that damage and loss exists, and that the landlord has provided proof of the amount required to support their claim. I agree with the tenant's premise that the best mitigation in this matter was the lesser of a quantum of options. However, I am satisfied the landlord took the step of patching one door and supplying a matching second door to all other doors, rather than replacing all the cabinet doors with units currently available. I find the landlord's course aptly supports the measures they took were reasonable to minimize the loss, meeting the second part of Section 7 of the Act.

I find that 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. I have not been presented with sufficient evidence from the tenant that damage occurred because of flawed design or flawed materials. In this matter, I find it was available to the tenant to alert or notify the landlord of impending damage or need for repairs earlier than later during the 2-year tenancy, however chose not to do so and through their repetitive action contributed to greater than normal deterioration of the doors toward destruction. As a result of all the above I find the landlord is owed compensation for their loss.

I accept from the landlord's testimony that the kitchen cabinet doors of the unit are 11 years old. **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements – FURNISHINGS 2. Cabinets, Counters: Bath, Kitchen** states that their useful life is 25 years. Therefore, toward full mitigation in this matter it would be reasonable to

compensate the landlord for the balance of the useful life of the cabinet doors, which I set as follows:

(Repair door + new door) x 14 / 25	or, \$350.00 x 56% =	\$196.00
Labour		\$ 65.00
Taxes @ 12%		\$ 31.32
	to landlord	<b>\$292.32</b>

As the landlord has in part been successful in their application, they are entitled to recover their filing fee. Calculation for a Monetary Order is as follows:

landlord's compensation	\$ 292.32
filing fee to landlord	\$ 100.00
total award to landlord	\$392.32
<i>Less remaining security deposit held in trust by landlord</i>	<i>-\$564.80</i>
<b>Monetary Order to tenant</b>	<b>( \$172.48 )</b>

**I Order** the landlord may retain **\$392.32** of the tenant's security deposit of \$564.80 in full satisfaction of their award, and return the balance, forthwith. To perfect my Order,

**I grant** the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$172.48**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The landlord's application has been granted in the above terms. The tenant is given a monetary order in the above terms.

**This Decision is final and binding.**

*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: December 03, 2019

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Residential Tenancy Branch