



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFL MNDL

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to authorization to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The landlord testified that the tenancy started in June 2013. The monthly rent was \$1,800.00. The tenant has paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. Both deposits have been returned to the tenant.

The landlord made a previous application for dispute resolution against the tenant for compensation for damage to the rental unit. The landlord's previous application was dismissed with leave to reapply. The hearing numbers of the previous Residential Tenancy Branch hearings are reference on the first page of this decision.

The landlord claimed \$11.74 to purchase chemicals to clean pet hair from the laundry machine. The tenant admitted that there was debris.

The landlord claimed \$61.59 for a replacement garage door opener which was not returned. The tenant testified that the garage door opener was not returned because it was broken.

The landlord claimed \$155.20 to change the locks because the tenant only returned two of three sets of keys. The tenant testified that she returned all the keys.

The landlord claimed \$62.46 to replace the dirty water filter in the refrigerator. The tenant testified that she never used the filter.

The landlord claimed \$80.31 for the replacement of blind end caps. The tenant testified that only one cap was off and she left it on the window sill. The tenant testified that the landlord could have easily just screwed the cap on again.

The landlord claimed \$414.75 for carpet cleaning. The landlord testified that the carpets were not cleaned and they had pet urine stains. The landlord provided a receipt for the carpet cleaning. The tenant testified that the carpets were not dirty and they did not have stains.

The landlord claimed \$176.40 for house cleaning. The landlord provided a receipt for the cleaning services. The landlord testified that the rental unit was not left in a clean condition. The tenant claimed that she left house in clean condition and she provided photograph showing the rental unit in clean condition.

The landlord claimed \$281.40 for plumbing expenses to unclog a sink. The landlord testified that the sink was full of hair. The landlord provided a receipt dated April 18, 2019. The tenant testified that there were no clogged sinks when she moved out.

The landlord claimed \$11.97 in mailing expenses to send the tenant a request to complete a condition inspection report.

The landlord claimed \$493.50 to repair a newel post. The tenant testified that the newel post was damaged before she moved in. The landlord provided an estimate for \$493.50.

The landlord claimed \$2,748.61 to replace the carpet because it was stained and damaged. The landlord provided an estimate for the cost of replacing the carpet.

The landlord claimed that hardwood floors were scratched and gouged and they needed go be replaced. The landlord provided an estimate of \$8,599.50 to replace the hardwood floors. The tenant testified that the scratches were pre-existing.

The landlord claimed \$467.76 to clean the tile grout. The landlord provided photographs and a receipt.

The landlord claimed \$1,357.65 to replace the garage door which he claims the tenant damaged. The landlord provided an estimate for the repair cost. The tenant testified the damage was there when she moved out.

The landlord claimed \$5,439.00 for miscellaneous repairs which included baseboard repair, damage to a bifold door and damage to wall texture. The landlord provided an estimate.

The landlord claimed \$111.97 for unpaid electric from March 2019. The landlord provided a utility invoice showing \$319.65 was owed for billing service from February 5, 2019 to April 4, 2019. The landlord claims that the tenant is responsible to two-thirds of the utility billing.

The landlord claimed \$178.54 for a replacement toilet seat and toilet handle.

The landlord claimed \$22.18 to replace window locks which the landlord claimed the tenant broke.

The parties both testified that the tenancy ended on March 31, 2019 but a condition inspection report was not completed on move-out. The landlord testified that she provided notice in writing to the tenant to complete a condition inspection report on April 24, 2019 but the tenant did not participate in the condition inspection report. The tenant argued that it was too late to conduct a condition inspection report 25 days after she had moved out.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

In analyzing this matter, I have not considered the condition inspection report on move out as it was generated by the landlord, without the tenant's participation, 25 days after the tenancy ended. Residential Tenancy Branch Regulation 16 requires the scheduling of the condition inspection to be done in good faith. I do not find that it is good faith to unilaterally schedule the condition inspection 25 days after the end of the tenancy. As such, I do not find that this condition inspection report was prepared in

accordance with the regulations and I am not considering the condition inspection report on move out in this decision.

Each of the landlord's claims is addressed:

(i) *Chemicals*

I found the landlord's testimony, as corroborated by a receipt, that cleaning supplies were needed to clean the laundry appliances to be credible. Further, the tenant admitted that there was debris. Accordingly, I grant the landlord's request for \$11.74 for cleaning chemicals.

(ii) *Garage door opener*

I find the landlord has presented sufficient evidence to establish his claim for \$61.59 to replace the nonreturned garage door opener as the tenant's testimony that the remote was broken did not explain the nonreturn of the opener. I award the landlord \$61.59 for replacement of the garage door opener.

(iii) *Lock changing*

I find that the landlord did not provide sufficient evidence to establish his claim to change the locks. The landlord testified that the tenant did not return the keys and the tenant testified that she had. In the absence of additional evidence, I am unable to find that a change of locks was necessary. As the landlord has the burden of proving this claim, I dismiss the landlord's claim for lock change services.

(iv) *Water filter*

I find that the landlord has not established that the tenant has an obligation to replace water filters in the refrigerator. Accordingly, this claim is denied.

(v) *Blind caps*

I find that the landlord did not provide sufficient evidence to establish his claim for costs related to blind caps. The landlord testified that the blind caps were missing and the tenant testified that only one blind cap was off and she left it for the landlord. In the absence of additional evidence, I am unable to find that the landlord incurred a loss in relation to the blind caps. As the landlord has the burden of proving this claim, I dismiss the landlord's claim for replacement of blind caps.

(iv) *Carpet cleaning*

I find that the landlord has provided sufficient evidence to establish his claim for carpet cleaning based on the photographs showing the carpets were stained and dirty. Further the landlord has provided sufficient proof of his damages by providing the cleaning invoice. I grant the landlord a monetary order for \$414.75 for carpet cleaning.

(v) *House cleaning*

I find that the landlord has not provided sufficient evidence to establish his claim for house cleaning. Based on the photographs provided by the tenant, I find that the landlord has not provided sufficient evidence to prove that cleaning services were required. Accordingly, I dismiss this claim.

(vi) *Plumbing repair*

I find that the landlord has failed to provide sufficient evidence to establish that the plumbing clog was caused by the actions or the neglect of the tenants. Accordingly, this claim is dismissed.

(vii) *Mailing costs*

I find that the landlord has not provided a basis under Act or the tenancy agreement which establish a responsibility for the tenant to reimburse the landlord's mailing costs. Accordingly, this claim is denied.

(viii) *Newel post*

I find that the landlord did not provide sufficient evidence to establish his claim for damage to the newel post. As both parties provided conflicting testimony, in the absence of additional evidence, I am unable to find that the tenant damaged the newel post on the balance of probabilities. As the landlord has the burden of proving this claim, I dismiss the landlord's claim for damage to the newel post.

(ix) *Carpets*

*Residential Tenancy Policy Guideline* No. 40 states that the useful life of carpet is 10 years and the landlord testified that the carpet was ten years old. As such, I find that the carpet had already reached the end of its useful life and I find that the landlord has not provided sufficient evidence of a loss in relation to the carpet. Accordingly, landlord's application for compensation in regard to the carpet is dismissed.

(x) *Hardwood floors*

I find that the landlord did not provide sufficient evidence to establish his claim for damage to the hardwood floor. As both parties provided conflicting testimony, in the absence of additional evidence, I am unable to find that the tenant damaged the hardwood flooring on the balance of probabilities. As the landlord has the burden of proving this claim, I dismiss the landlord's claim for damage to the hardwood flooring.

In addition, although the landlord claimed that the flooring needed to be completely replaced, they did not provide sufficient evidence to establish that the flooring could not be repaired instead of replaced. In the absence of such evidence, I am not satisfied that the landlord has made an adequate effort to mitigate this loss as required by section 7(2) of the Act. For the above reasons, this claim is dismissed.

(xi) *Tile grout*

The landlord claimed \$467.76 to clean the tile grout. However, I find that the landlord did not provide sufficient evidence to establish that the damage to tile grout was more than reasonable wear and tear which is not compensable pursuant to section 32(4) of the *Act*. Accordingly, the landlord's claim for compensation in regards to the tile grout is dismissed.

(xii) *Garage door*

I find that the landlord did not provide sufficient evidence to establish his claim for damage to the garage door. As both parties provided conflicting testimony, in the absence of additional evidence, I am unable to find that the tenant damaged the garage door on the balance of probabilities. As the landlord has the burden of proving this claim, I dismiss the landlord's claim for damage to the garage door.

(xiii) *Miscellaneous repairs*

The landlord claimed \$5,439.00 for miscellaneous repairs which included baseboard repair, damage to a bifold door and damage to wall texture. The landlord provided photographs showing some damage to floorboard and walls. However, I find the estimate of \$5,439.00 to be excessive in relation to damage demonstrated in the photographs. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

"Nominal damages" are a minimal award. Nominal damages may be awarded where 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 matter, an award of nominal damages is appropriate because the landlord has established that there was damage to the floorboard, door and walls but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$500.00 to make the repairs.

(xiv) *Utilities*

The landlord claimed \$111.97 for unpaid electric from March 2019. The landlord provided a utility invoice showing \$319.65 was owed for billing service from February 5, 2019 to April 4, 2019. The landlord claims that the tenant is responsible to two-thirds of the utility billing. The landlord calculated the tenant's share of the March 2019 utilities to be \$111.97. Based on the landlord's testimony, corroborated by the utility statements, I find that the landlord is entitled to a monetary order of \$111.97 for unpaid utilities.

(xv) *Replacement toilet parts*

I find that the landlord did not provide sufficient evidence to establish that the damage to the toilet was more than reasonable wear and tear which is not compensable pursuant to section 32(4) of the *Act*. Accordingly, the landlord's claim for compensation in regards to the toilet parts is dismissed.

(xvi) *Window locks*

I find that the landlord did not provide sufficient evidence to establish that the damage to the window locks was more than reasonable wear and tear which is not compensable pursuant to section 32(4) of the *Act*. Accordingly, the landlord's claim for compensation in regards to the window locks is dismissed.

(xvii) *Filing fees*

Since the landlord was partially successful in this matter, I grant the landlord an award of one-half of the filing fees, being \$50.00, pursuant to section 72 of the *Act*.

Accordingly, I grant the landlord a monetary order in the amount of **\$976.49**, as calculated below.

<u>Item</u>	<u>Amount</u>
Compensation for cleaning chemicals	\$11.74
Compensation for carpet cleaning	\$414.75
Compensation for damage to baseboards bifold door and walls	\$500.00
Partial reimbursement of filing fee	\$50.00
Total	<b>\$976.49</b>

Conclusion

I grant the landlords a monetary order in the amount of **\$976.49**. If the tenant fails to comply with this order, the landlords may file the order in the Provincial Court to be enforced as an order of that Court.

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 19, 2019

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Residential Tenancy Branch