



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on September 16, 2019, in which the Landlord sought monetary compensation from the Tenants for cleaning and repairs to the rental, authority to retain the Tenants' security deposit, and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on January 17, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this tenancy began September 1, 2016. Monthly rent was \$1,900.00 and the Tenants paid a \$925.00 security deposit.

The tenancy ended on September 1, 2019.

The parties participated in a move out condition inspection; a copy of the report was provided in evidence and which confirmed the Tenants agreed the report accurately recorded the condition of the rental unit at the end of the tenancy.

The report indicated the kitchen stove control panel was warped, the blind in the master bedroom was stuck and the carpets needed cleaning.

In the within action the Landlord sought the following:

Replacement part for kitchen stove control panel	\$285.13
Replacement of the master bedroom blind	\$175.00
Carpet cleaning	\$140.00
<b>TOTAL CLAIMED</b>	<b>\$600.13</b>

The Landlord claimed that the warping of the stove was a result of neglect, not normal wear and tear. The Landlord also noted that the stove was not warped on move in, as indicated on the move in inspection. The Landlord testified that he purchased the rental property in 2013 or 2014 and purchased the stove at that time.

The Landlord further stated that he tried to repair the master bedroom blind, but one of the cords was jammed in the gear. He stated that he replaced the blind as he could not fix it.

In response to the Landlords' claims, the Tenant O.M. testified as follows. He confirmed the Tenants are agreeable to the \$140.00 claimed by the Landlord for the carpet cleaning.

O.M. stated that they observed the warping of the stove, but claimed it was normal wear and tear as it occurred over time due to boiling pots of water. He further stated that the warping did not affect the function of the stove, it was just cosmetic. In terms of the front burner the Tenant stated that the igniter would not work consistently, but it was functional and the stove did not need to be replaced.

The Tenants denied damaging the blinds. O.M. stated that as they had children, they never pulled the blinds up, they merely opened the flaps.

The Tenants submitted a picture of the stove, which showed it as being outside the rental unit.

In reply the Landlord confirmed that he replaced, rather than repaired, the stove as the cost to replace the part was \$285.13, in addition to 1.5 hours of labour for the melted control panel, not including the cost of the burner. He stated that the stove was disposed of.

The Landlord confirmed he purchased a new stove for \$600.00.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

*Policy Guideline 40* also provides a table setting out the useful life of most building elements. Accordingly, I discount the Landlord's claim for replacement of the following building

The Landlord claimed compensation in the amount of \$285.13 cost to replace the control panel on the stove. The evidence confirms the Landlord opted to replace rather than repair the stove. Whether that was the appropriate course of action or not is irrelevant as the Landlord claimed the lesser repair cost.

The Tenants submit that the stove did not need to be replaced as the damage was merely cosmetic.

I find the damage to the stove was more than regular wear and tear; it appears as though either Tenants left pots unattended repeatedly, or on less occasions but for a significant duration as to cause the warping shown in the photos.

I note that the Landlord testified that the stove was five to six years old at the time the tenancy ended. *Policy Guideline 40* provides that a stove has a useful life of 15 years; accordingly, had I awarded the Landlord the replacement cost of \$600.00, I would have discounted the claim by 37% (5.5/15) such that their award would have been \$378.00 maximum.

As the Landlord did not repair the stove, he did not actually incur the \$285.13 amount claimed. However, I find he has suffered a loss. As such I award him the nominal sum of **\$250.00** for losses resulting from the Tenants damaging the stove.

The Landlord also claimed compensation in the amount of \$175.00 for the bedroom blinds. Photos submitted by the Landlord confirm the blind was stuck; this is also confirmed on the move out inspection. I accept the Landlord's evidence that he tried to fix the blinds, but it was no possible.

While the Landlord did not provide evidence as to the age of the blinds, however, I find it likely they were purchased at the time they purchased the home in 2014. As such, I find that the blinds were also 5-6 years old at the time the tenancy ended. *Policy Guideline 40* provides that blinds have a useful life of 10 years. Accordingly, I discount the Landlord's claim of \$175.00 by 55% and award him compensation in the amount of **\$96.25**.

The Tenants agreed to compensate the Landlord the **\$140.00** claimed for carpet cleaning. I therefore award the Landlord this sum.

As the Landlord has been substantially successful, I also award him recovery of the **\$100.00** filing fee.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$586.25** for the following:

Replacement part for kitchen stove control panel	\$250.00
Replacement of the master bedroom blind	\$96.25
Carpet cleaning	\$140.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$586.25</b>

Pursuant to sections 38, 67 and 72 of the *Act*, I authorize the Landlord to retain **\$586.25** from the Tenants' \$925.00 security deposit. The Landlords must therefore return the **\$338.75** balance to the Tenants.

In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$338.75**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: January 31, 2020

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Residential Tenancy Branch