



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, FFL

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 48 minutes. The two landlords, male landlord ("landlord") and "female landlord," and the male tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

The hearing began at 1:30 p.m. with me and the tenant present. The landlords called in at 1:31 p.m. The landlords disconnected from the hearing from 1:34 to 1:35 p.m., citing telephone problems. I notified the landlords about what occurred in their absence. The hearing ended at 2:18 p.m.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

The tenant confirmed that no documentary evidence was submitted by the tenants for this hearing.

Both parties affirmed that they had no objections and they were ready to proceed with the hearing.

### Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2018 and ended on September 29, 2019. Monthly rent in the amount of \$2,663.12 was payable on the first day of each month. A security deposit of \$2,400.00 was paid by the tenants and the landlords returned the full deposit to the tenants. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The rental unit was furnished by the landlords during the tenants' tenancy.

The landlords seek a monetary order of \$1,284.30 plus the \$100.00 application filing fee. The landlords seek \$222.88 for a missing patio side table, \$274.40 for a missing mattress, \$83.50 for eight burned out light bulbs, \$19.34 to replace a garage door battery, and \$97.38 for missing felt-lined clothing hangers. The landlords seek \$133.50 to hire a person to reconnect the audio and video home theatre wiring system, which the landlord said the tenants asked to disconnect and cancel the cable during their tenancy, which was agreed to by the landlords. The landlords seek \$66.62 for a damaged induction stove top saucepan, \$96.00 for two missing knives of a 14-piece knife set, \$84.43 for missing entryway interlocking foam floor mats, \$66.32 to replace a refrigerator water filter and \$39.93 for a missing refrigerator bypass plug, and a \$100.00 estimate to replace the dimmer switch for the living room floor lamp.

The landlord claimed that no written inventory was kept for the furnishings provided in the rental unit to the tenants during their tenancy. He said that photographs of the items were provided by the landlords, from when they purchased the rental unit in May 2016. He stated that there were other tenants living in the rental unit for one year after the landlords moved out, and then the landlords moved back in and out, before the tenants began this tenancy.

The landlord confirmed that the landlords performed their own move-out inspection without the tenants. He maintained that the tenants did not participate in any move-in inspection, despite the female landlord being present upon move-in with the tenants, even though the landlord was out of town. He said that the landlords also offered move-out condition inspection opportunities, but the tenants just vacated without responding. The landlord agreed that no approved RTB form "Notice of Final Opportunity to Schedule a Condition Inspection" was provided to the tenants, as he did not know what it was. He explained that the landlords communicated with the tenants about the damages and missing items at the end of the tenancy, assuming the tenants' movers mistakenly took the missing items.

The tenants dispute the landlords' application, except for the \$83.50 for the eight burned out light bulbs. The tenant claimed that the tenants did not take any items from the rental unit, as they have no use for them. He said that the landlords do not have evidence to prove the missing items were taken by the tenants, as there were no move-in or move-out condition inspection reports completed for this tenancy. He stated that the landlords knew when the tenants were moving in and out and they did not initiate or attempt to complete these reports, as required. He maintained that the female landlord was present when the tenants moved in and simply gave the rental unit keys to them and left, not asking or attempting to complete a move-in condition inspection report.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$83.50 for replacing eight burned out light bulbs at the rental unit. The tenants agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application for \$1,200.80 without leave to reapply.

I find that the landlords did not sufficiently prove their claim, failing to properly explain the photographs, receipts, invoices, and documents that the landlords submitted for the hearing. The landlord did not go through any of the above documents. He simply read from the monetary order worksheet during the hearing.

I also find that the landlords failed to provide a written inventory of the furnishings and items provided with the rental unit when the tenants moved in; the landlord confirmed that none was kept. The landlord stated that photographs were provided with the landlords' application; however, these photographs were taken when the landlords first purchased the rental unit and moved into it in May 2016. The landlord confirmed that other tenants lived in the rental unit for a one-year period after the landlords moved out and then the landlords moved back in and out again, before the tenants moved in. Therefore, these items could have been removed or gone missing while the other tenants or the landlords were living there, and without an accounting of the items, I find that the landlords are unable to prove that the tenants took the items.

I find that the landlords failed to indicate the condition of the rental unit when the tenants moved in or out. No move-in or move-out condition inspection reports were completed for this tenancy. The landlords did not provide the tenants with two opportunities to conduct the inspections, on the approved RTB form "Notice of Final Opportunity to Schedule a Condition Inspection," as required by section 17(2)(b) of the *Residential Tenancy Regulation*. Therefore, I find that the landlords cannot prove what damages or items were missing as a result of the tenants, since the previous tenants and the landlords were living at the rental unit, prior to the tenants.

As the landlords were mainly unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$83.50 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlords' application is dismissed without leave to reapply.

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: March 27, 2020

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Residential Tenancy Branch