



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages in the amount of \$1,221.26; and for a monetary order for damage or compensation for damage under the Act in the amount of \$1,828.70, retaining the security deposit for these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one appeared on behalf of the Tenant. The teleconference phone line remained open for over an hour and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by email. She said that her email service provider confirmed that the Tenant had received the email. Further, the Landlord said that she and the Tenant texted back and forth about the documents and items the Tenant had left behind.

I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord said that the fixed term tenancy began on July 15, 2014, and ran to July 15, 2015. She said it then operated on a month-to-month basis. The Landlord said the Tenant paid her a monthly rent of \$1,525.00, due on the first day of each month. The Landlord said that the Tenant paid her a security deposit of \$762.50, and no pet damage deposit.

The Landlord said that the rental unit is a suite in a single-family dwelling. She said that the rental unit was last renovated two years prior to the Tenant moving in on July 15, 2014. The Landlord said the rental unit has two bedrooms and one bathroom.

The Landlord said that the Parties did a condition inspection at the beginning of the tenancy and that the Landlord gave the Tenant a copy of the condition inspection report ("CIR") at the start. The Landlord said that the Parties inspected the condition of the rental unit at the end of the tenancy, but she said that the Tenant would not sign or date the CIR.

The Landlord submitted a monetary order worksheet ("MOW") with the following claims.

	Receipt/Estimate From	For	Amount
1	[Parts supplier] – Fridge shelf	To replace fridge shelf	\$161.36
2	[local dump]	To do tenant's dump run	\$20.00
3	[Cleaning Co.] Quoted \$304.00	Tenant paid her \$100.00	\$204.00
4	[Handyman]	To fix counter	\$170.00
5	[Glass company]	To fix bedroom screen	\$130.90
6	[Online international manufacturer]	To fix one kitchen door	\$35.00
7	[Flooring company]	To fix one flooring area	\$500.00
		Total monetary order claim	\$1,221.26

We reviewed each claim from the MOW as follows:

#1 Refrigerator Shelf → \$161.36

The Landlord submitted a photograph of the damaged shelf.

The Landlord said:

Going through the inspection, it looks like electrical tape or duct tape at the back and he broke the shelf and taped it up. I didn't know anything about that. I jotted down the serial number and sent it to [the manufacturer] and they sent back the cost. It adds up to \$161.36. This serial number indicates that the fridge was new in 2014. We bought the shelf from [the manufacturing company].

The Landlord submitted a copy of a quote to fix the refrigerator shelf from an appliance parts retailer. The quote totalled \$161.36.

#2 Dump Run → \$20.00

The Landlord said:

He literally asked me to take the stuff to the dump. I didn't know I'd be doing the dump run. He said it's all garbage, take what you want. And then he said, the rest

is garbage. When we did the move out inspection, he was on a motorcycle, so he had no intention of taking his garbage. It was \$29.00, but we charged \$20.00.

The Landlord submitted a photograph of the back of a station wagon filled with garbage bags, boxes, baskets, and miscellaneous other items. The Landlord submitted a receipt that would not open on my computer. However, in the hearing, she said it is a receipt for \$23.00 plus a \$5.00 transaction fee. The Landlord said: "He should have taken his own garbage."

#3 Cleaning → \$204.00

The Landlord said:

He knew the new people were coming in and the painter. As I was moving the stove for the painter, I said 'oh my God', I looked under the cabinets, I realized that he didn't have anything cleaned. It was spotless when he moved in. I gave him a text message with a cleaning lady he could use.

My little girl was responsible for cleaning light switches and base boards, my husband had to take apart the toilet, which was full of blue cream material. He never cleaned it. It was horrible.

The Landlord submitted photographs showing extensive dirt behind the refrigerator, dirty baseboards and floor in the kitchen, and elsewhere in the rental unit. The Landlord also said: "The carpet lady saw that the carpet was not clean around the edge."

I was unable to open the Landlord's receipts for this claim.

#4 Fix Counter → \$170.00

The Landlord said:

We tried to fix it as best we could. We would have to rip out the entire sink – an \$1800 job, so we fixed it as best we could.

I asked [repairman E.H.] for an estimate. He said it would be \$130.00 or \$140.00 of materials. He's a friend and he gave me the best price he can. [His estimate:]

June 2, 2020

Hey [Landlord]

The counter top can be repaired by patching and painting the affected spots. You'd be looking at approximately \$130 in labour and \$40 in material.

The Tenant said it was normal wear and tear, but I disagree; it's not normal wear and tear – a scratch is normal wear and tear. This is well younger than 25 years. We renovated in 2012. There were also scratches all over the counter, but the big gauge in the counter top was the only thing that mattered in terms of damage. I let the scratches go, but not that.

He showed up with his Harley and had a nonchalant attitude – 'that's your problem'.

The Landlord's receipt was a document that I was unable to open on my computer.

#5 Fix Bedroom Screen → \$130.90

The Landlord submitted a photograph of a bedroom window that shows the screen in a warped position sticking out of the back of the window.

The Landlord said:

Even the neighbours knew about the screen. They were going to fix it, and I reminded him a month before, and he said 'yeah, yeah...'. On move out day I said, 'oh you didn't get it fixed'.

The guy knows my husband and we have the estimate in writing, and he charged my husband only \$60.00. He sent us an invoice for what it would have been for the tenant. He wasn't even willing to pay the \$60.00 for the screen, He only wanted to pay me \$100.00 for the cleaning.

The Landlord submitted a quote for a new screen with the following charges:

<u>Description</u>	<u>Qty</u>	<u>Rate</u>	<u>Amount</u>
Build new screen	1	85.00	\$ 85.00

Screen mesh	13.50	1.25	16.88
Finger pulls	2	7.50	<u>15.00</u>
		Subtotal	\$116.88
		GST @5%	5.84
		PST @ 7%	<u>8.18</u>
		TOTAL	<u>\$130.90</u>

The Landlord said: "Anybody else who walked in off the street, would get an estimate amount \$85.00 for the build new screen, \$16.88 is for the mesh, \$15.00 to pull the screen out, and \$5.xx for PST and GST. This is where they had it fixed."

#6 Fix Kitchen Door → \$35.00

The Landlord submitted photographs of the kitchen cupboard door. The photos showed the white melamine peeling off the bottom edge of the cupboard door.

The Landlord said:

The Tenant told me to 'take it or leave it', he was boiling something – that cabinet was really bad, we had to get a new door. I took it off the internet, not [international furnishings store]. That is not wear and tear. It didn't happen to the other door on the right, so he was doing something on the left had side. He drinks a lot of tea, so maybe he had the kettle there all the time. There were marks everywhere throughout the kitchen, and we let them go.

The Landlord submitted a screen shot of the cost of a new cupboard door, which was advertised for \$35.00.

#7 Fix Flooring Area → \$500.00

The Landlord submitted a photograph of a circular stain on a beige carpet.

The Landlord said:

He turned one bedroom into a clay area, and he did it in there. There's a giant ring that can't come out. It's a 24-inch circle in the carpet. We didn't replace it, but it won't come out. It's a red mark and all the scratches are in the area. I sent people pictures of it, but they said it isn't normal wear and tear.

The Landlord also submitted a photograph of laminate flooring with a pattern of scratches across the laminate. She submitted a photo of an area of the flooring without the scratches for comparison. The Landlord also submitted a photograph of the laminate with a red stain in it, although it is difficult to determine how large the stain is without any context.

The Landlord said:

The current market rate is \$500.00 for each area. I have worked in the area for years, and the big ring will never come out. I have a letter from [C.H. flooring company].

The Landlord said this company told her the cost to fix the floor was “between \$500.00 and \$550.00.” Again, unfortunately, the Landlord’s quote was in a format that my computer could not open.

She said “It’s more if we go by square footage, and that’s just one area, and he said he’ll pay for \$200.00. He agreed to the \$200.00. We have to get the bedroom carpet changed, but didn’t have time before new tenant moved in. All we had time for is cleaning it.” The Landlord said that there is a stain on the carpet by the door and another spot by the fire place, “...and then that red mark.”

The Landlord said that she owns a flooring company. She said: “The new tenant saw it as I was trying to fix the floor. We’re extremely clean people, and [her husband] was so grossed out, why he took out the toilet and fixed it.” The Landlord submitted a photo of a man cleaning a toilet in the bathtub.

Second Claim

The Landlord’s second claim in her Application was for \$1,828.70. In the Application, the Landlord said the following about this claim:

THIS IS ACTUALLY NOT REALLY BEING REQUESTED. I ACTUALLY CHOSE TO PAINT BECAUSE I KNEW GEOFF WAS A SINGLE WIDOW and he had zillions of pictures over the wall. Covid-I couldn’t expect him to paint. We r good people and always have been, but with Geoff insisting with a \$400.00 deposit returned, regardless of all the evidence. PLSE you decide what is fair. NO I don’t want to give deposit back, but do we deserve more for than 23 hours of cleaning? \$4.35 is what I was paid by the hour.

[reproduced as written]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I advised her on how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving her claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim.

In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

Landlords’ and tenants’ rights and obligations for repairs are set out in sections 32 and 37 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

...

[emphasis added]

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

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,

...

[emphasis added]

#1 Refrigerator Shelf → \$161.36

The Landlord said that the refrigerator was new in 2014. Therefore, it was new at the start of the tenancy. Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of a refrigerator is 15 years. The evidence before me is that refrigerator and this shelf inside it were new in 2014, so they were approximately six years old at the end of the tenancy and had nine years or 60% of their useful life left. The CIR indicates that the refrigerator was in good condition at the start of the tenancy, aside from a "one scratch [on] top"; however, the Landlord said in the hearing that the Tenant cracked the shelf in the refrigerator and tried to repair it with electrical or duct tape. There is no evidence before me to the contrary.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

I find that the Landlord is eligible for 60% of the useful life of the shelf that had to be replaced. I, therefore, award the Landlord with **\$96.82** or 60% of the replacement cost of the shelf, pursuant to section 67 of the Act.

#2 Dump Run → \$20.00

I find from the Landlord's testimony and photographs that the Tenant left the rental unit with at least one large vehicle worth of items to be disposed of. I find that the Landlord had to get rid of these items, herself, and that charging only \$20.00 for this effort and dumping fees is reasonable in the circumstances. I award the Landlord with **\$20.00** for this claim, pursuant to section 67 of the Act.

#3 Cleaning → \$204.00

Based on the Landlord's testimony and photographs, I find that the Tenant did not comply with his obligation to leave the rental unit "reasonably clean" pursuant to sections 32 and 37 of the Act. I find that the Landlord and her family had to do the cleaning for the Tenant. I find that the Landlord's claim for having to clean this two-bedroom, one-bathroom rental unit is reasonable in the circumstances. If the Landlord's family had done approximately eight hours of cleaning at a standard rate of \$25.00, this would equal \$200.00, which I find to be reasonable in the circumstances. I, therefore, award the Landlord with **\$204.00** for cleaning the rental unit at the end of the tenancy, pursuant to section 67 of the Act.

#4 Fix Counter → \$170.00

The Landlord said that the counter was new in 2012, two years prior to this tenancy starting. As such, the counter was eight years old at the end of the tenancy. PG #40 states that the useful life of a counter is 25 years. Therefore, the counter had 17 years or 68% of its useful life left at the end of the tenancy.

The Landlord said that they did their best to repair it, but did not bear the cost that was quoted to them by the repairman. As such, I cannot award the Landlord with costs that they have not incurred. However, in this set of circumstances, I award the Landlord a nominal amount of **\$50.00** for this claim, pursuant to Policy Guideline #16 ("PG #16"), and section 67 of the Act.

#5 Fix Bedroom Screen → \$130.90

As noted above, claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. The Landlord said that the person who repaired the screen only charged them \$60.00, but he also sent the Landlord an invoice for what it would have cost the Tenant, which was \$130.90.

I find that the cost the Landlord incurred for this damage was \$60.00; therefore, I award the Landlord with recovery of **\$60.00** from the Tenant, pursuant to section 67 of the Act and PG #16.

#6 Fix Kitchen Door → \$35.00

A tenant is required to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. Policy Guideline #1, *Landlord & Tenant – Responsibility for Residential Premises*, states:

Reasonable wear and tear refer 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 due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In the case before me, the Landlord speculated that due to the Tenant's tendency to drink tea often, this may have happened from a kettle frequently boiling in the same location. If this is the case, I find that the damage was caused by reasonable wear and tear over the Tenant's six years in the rental unit. Otherwise, I find that the Landlord has not provided sufficient evidence that the Tenant caused this damage intentionally or from unreasonable usage. As a result, I dismiss this claim without leave to reapply.

#7 Fix Flooring Area → \$500.00

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. I find that the Landlord suffered a loss as a result of the Tenant's actions that led to the stains on the carpet and laminate, as well as scratches on the laminate. However, I find that the Landlord has not proven the

quantification of damages in this matter, pursuant to step three of the Test; therefore, I find that her claim fails. Pursuant to PG #16, I find that the Landlord is entitled to only nominal damages in the amount of \$75.00 for the damage done to the flooring. This is because the Landlord relied on an estimated amount, without providing evidence of the cost incurred in this instance. I, therefore, award the Landlord with **\$75.00** pursuant to section 67 of the Act.

Second Claim

In the Landlord's Application regarding her claim for \$1,828.70, the Landlord said "...this is actually not really being requested...". Accordingly, I dismiss this claim without leave to reapply, pursuant to section 52 of the Act.

Summary and Set Off

The following chart summarizes the Landlord's awards in this Decision.

	Receipt/Estimate From	For	Amount
1	[Parts supplier] – Fridge shelf	To replace fridge shelf	\$96.82
2	[local dump]	To do tenant's dump run	\$20.00
3	[Cleaning Co.] Quoted \$304.00	I got paid \$100.00	\$204.00
4	[Handyman] Estimate	To fix counter	\$50.00
5	[Glass company]	To fix bedroom screen	\$60.00
6	[Online international manufacturer]	To fix one kitchen door	\$0.00
7	[Flooring company]	To fix one flooring area	\$75.00
		Total monetary order claim	\$505.82

Given the Landlord's partial success in her claim, I also grant her recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act, for a total award of **\$605.82**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$762.50 in full satisfaction of the Landlord's

monetary award. I authorize the Landlord to retain \$605.82 of the Tenant's security deposit and return the remaining \$156.68 to the Tenant, as soon as possible.

As a result, I grant the Tenant a Monetary Order from the Landlord of **\$156.68** for the return of the remainder of the Tenant's security deposit after the satisfaction of the Landlord's monetary award in this matter.

Conclusion

The Landlord is partially successful in her Application for compensation from the Tenant in the amount of **\$505.82**. The Landlord's other claims are dismissed without leave to reapply. The Landlord is also awarded recovery of the \$100.00 Application filing fee, given her partial success in this matter. The Landlord is authorized to retain \$605.82 from the Tenant's \$762.50 security deposit in full satisfaction of this award.

The Landlord is ordered to return the remaining \$156.68 of the security deposit to the Tenant as soon as possible. The Tenant is granted a Monetary Order of **\$156.68** from the Landlord pursuant to section 67 of the Act.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 28, 2020

Residential Tenancy Branch