



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XVI LP C/O METCAP LIVING MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

The landlord applied to retain part of the tenants' security deposit as compensation for a damaged kitchen stove and to retain part of the security deposit to pay for the filing fee, pursuant to sections 38(6), 67, and 72 of the *Residential Tenancy Act* ("Act").

The landlord's agent and one of the tenants attended the hearing on January 11, 2021, which was held by teleconference.

No issues of service were raised by the parties.

### Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recovery of the application filing fee?

### Background and Evidence

The tenancy began on August 31, 2017 and ended on or about September 29, 2020. Monthly rent was \$2,851.55 and the tenants paid a security deposit of \$1,337.50. A copy of the written tenancy agreement was submitted into evidence.

The landlord seeks compensation in the amount of \$690.59 for repair costs to a kitchen stove that the landlord claims the tenants damaged during the tenancy. A copy of a completed Condition Inspection Report was submitted into evidence by both parties.

Also submitted into evidence were photographs of the kitchen stove, by both parties. In addition, the landlord submitted a repair invoice (dated October 22, 2020) in the amount of \$690.59. The invoice notes that the work done was "replace panel control." The stove was installed brand new near the end of 2019.

The tenant argued that the damage for which the landlord seeks compensation is due to normal wear and tear. He explained that the control panel is situated in such a way that any time a pot or pan is removed the panel would get hit. He noted that removing pans and pots is an ordinary activity and normal use for a family. Over the course of an eight-month tenancy, he argued that for a family of four such as his would use the stove.

The landlord's agent explained that the landlord incurred repair costs, and that if the alleged damage was due to normal wear and tear then there would be no repair costs.

### Analysis

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. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord argues that the damage (that is, the scratches) to the stove control panel, or cover plate, is not due to normal wear and tear. The tenant argued that they used the stove in a manner that was "regular and normal use of a stove." Further, any damage that might have been caused would be the natural result of removing pots and pans from the stovetop. And, if damage then results from such ordinary use, then the appliance has a design issue, for which a tenant ought to be liable.

"Reasonable wear and tear," for the purposes of the Act, means the 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. (See *Residential Tenancy Policy Guideline 1 - Landlord & Tenant – Responsibility for Residential Premises*.)

I find, based on the evidence of the parties, that the damage to the stove control panel is due to reasonable wear and tear. The control panel is of a rather odd design, almost flush with the top of the stove, which exposes itself to the removal of pots and pans from the surface of the appliance. There is, I also note, the absence of any other damage to the stove, such as to the glass top itself or to the buttons and digital displays, which leads me to find that it is a design flaw in the appliance. It also leads me to find that, had the tenants been as negligent as they otherwise would have had to be in order to cause the scratches, there would likely be additional damage to the stove; there is none. (Indeed, as a homeowner who does most of the cooking for my own family, and one who owns a glass top stove – but one that does not have a control panel immediately below the cooking surface – I am well aware of the unavoidable scratches that occur from reasonable and ordinary use of a stove.) Moreover, a design flaw in a frequently used appliance such as a stove should not result in reasonable wear and tear that is of the type we see in this dispute.

In this dispute, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached section 37(2) of the Act. Accordingly, the landlord is not entitled to compensation.

Given the above, the landlord is ordered to return the tenants' security deposit of \$1,337.50 within 15 days of receiving this decision. A copy of a monetary order is issued, in conjunction with this decision, to the tenants should enforcement be necessary.

### Conclusion

I dismiss the landlord's application and order the landlord to return the tenants' security deposit within 15 days of receiving this decision.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 11, 2021

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Residential Tenancy Branch