



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain all of the tenants' security deposit (the deposit) in satisfaction of the monetary order requested, pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:46 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agents JL (the landlord) and TG, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on October 22, 2020, in accordance with section 89(1)(c) of the Act. The packages were mailed to the forwarding address verbally provided by the tenants on or around June 30, 2020 (the tracking numbers and the address are recorded on the cover page of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on October 27, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' deposit?
3. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate her claims.

The landlord affirmed the tenancy started on May 01, 2019 and ended on April 30, 2020. Rent was \$1,150.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$575.00 was collected and the landlord holds it in trust. The tenants have not provided their forwarding address in writing.

The tenancy agreement was submitted into evidence. It states:

#### 22. MOVE-IN/MOVE-OUT FEES

The Tenant(s) understand that he/she/they will be responsible to pay a move-in fee in the amount of \$100.00 at the beginning of the tenancy and a move-out fee in the amount of \$100.00 at the end of the tenancy. The Tenant(s) will inform Valley Realty of their move-out date no later than Ten (10) days before the physical move-out is performed.

The landlord stated the tenants did not pay the move-out fee and the amount of \$100.00 is outstanding.

The landlord affirmed the tenants attended the move out inspection on April 30, 2020 but refused to sign the move out condition inspection form (the report). The landlord did not sign and date the report. The report states the stove was in good condition when the tenancy started and damaged when it ended. It also states: "stovetop smashed".

The landlord testified she tried to repair the stove but it was not possible. The landlord purchased a new stove for \$1,163.83 (invoice submitted into evidence). The new stove is a more basic model than the previous one. The landlord stated that perhaps the

original stove was 7 years old when the tenancy started. 3 photographs showing the damaged stove were submitted into evidence.

A monetary order worksheet was submitted into evidence. The total amount the landlord is claiming for the two above referenced claims is \$1,263.83.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

### Stove replacement

Section 32(3) of the Act states: “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.”

Based on the report, the undisputed landlord’s testimony and photographs submitted, I find the tenants breached section 32(3) of the Act by damaging the stove and the landlord needed to replace it. The landlord provided uncontested evidence that the stove could not be repaired and needed to be replaced and provided credible proof of the cost of the replacement.

Residential Tenancy Branch Policy Guideline 40 states the useful life of a stove is 15 years. As the stove was about 8 years old when the tenancy ended, I award the landlord 50% of the stove replacement cost.

As such, I award the landlord \$581.92 for this loss (50% of \$1,163.83).

### Move-out fee

Based on the landlord’s undisputed testimony and section 22 of the tenancy agreement addendum, the tenants agreed to pay the move-out fee and did not pay this fee.

I find the tenants breached the tenancy agreement by not paying the move-out fee in the amount of \$100.00 and the landlord incurred a loss in that amount.

As such, I award the landlord \$100.00 in compensation for this loss.

### Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenants’ deposit of \$575.00 in partial satisfaction of the monetary award granted.

In summary:

Stove	\$581.92
Move out fee	\$100.00
Filing fee	\$100.00
Minus security deposit	\$575.00 (subtract)
<b>Total monetary award</b>	<b>\$143.92</b>

Conclusion

Pursuant to sections 38(4)(b), 67 and 72 of the Act, I authorize the landlord to retain the \$575.00 deposit and grant the landlord a monetary order in the amount of \$143.92.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants 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.

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: February 23, 2021

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Residential Tenancy Branch