



# 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 dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Each party acknowledged they were not recording the hearing.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

The parties agreed on the following details concerning their tenancy agreement:

ITEM	DETAILS
Written tenancy agreement	yes
Copy of agreement submitted	yes
Type of tenancy	Monthly
Date of beginning	February 3, 2020
Date of ending	March 1, 2021
Monthly rent payable on 1 <sup>st</sup>	\$1,450.00
Security deposit	\$750.00
Pet deposit	\$350.00
Outstanding rent	no
Forwarding Address Provided	March 3, 2021
Date of Application by Landlords	March 1, 2021
Condition inspection report – moving in	no
Condition inspection report – moving out	Yes, signed by both

The tenants agreed to compensate the landlords for certain of their claims in the amount of \$700.89.

The only item in dispute was the replacement of the stove top. The landlords clarified their claim as follows:

ITEM	AMOUNT
Stove top	\$655.40
Damages - Agreed	\$700.89
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$750.00)
(Less pet deposit)	(\$350.00)

<b>TOTAL CLAIM - DAMAGES</b>	<b>\$356.29</b>
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The landlords testified that the stove was new when the tenants moved in and the top was seriously scratched when they moved out requiring replacement. The landlords testified that a swear word was scratched into the surface. They stated that the stove is not being used pending replacement of the top for which a quote was submitted as evidence.

In support of their claim, the landlord submitted photos of the stove top showing the scratches and swear word scratched into the surface which they testified were taken on the day of move out. As well, the landlords submitted a condition inspection report on moving out conducted on February 24, 2021 in the presence of all parties and an agent of the tenants.

The report was signed by all tenants who denied the noted damages. On the reverse of a page of the report is an acknowledgement by the agent of the tenants that the damage to the stove top was greater than normal wear and tear.

There was no inspection on moving in as the landlords testified that they did not understand one was necessary. There were no photos taken on moving in

The tenants denied the scratches were more than wear and tear. They denied scratching words into the surface. They submitted 3 photos, one of which was blurred, and the other two of which did not show excessive scratching or any scratched words.

### Analysis

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

The above-noted criteria are based on sections 7 and 67 of the Act. Section 7(1) of the Act provided 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 allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

These sections state as following:

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.

. . .

67. Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The landlord must meet the burden of proof with respect to each claim.

The landlord's claim for the cost associated with the replacement of the stove top is considered.

When parties provide conflicting testimony, it is important to assess the parties' credibility.

The landlords' claim is supported by the photos, the condition inspection report with the acknowledgement by the agent that the damage is more than wear and tear, and the quote for the cost of replacement. I find the landlords' testimony to be credible, reasonable and reliable. Their presentation was well organized and straight forward.

The tenants' denied that they caused the scratches or scratched words into the surface.

They offered no explanation for how the damage occurred. In the circumstances, I do not place much weight on their denial of responsibility and find the landlords' version of events to be the more believable.

I find the damage to be more than wear and tear. I accept the landlords' testimony that the stove was new when the tenants moved in and seriously scratched when they moved out. I find the tenants are responsible for the damage to the stove top and are in breach of their obligations under the Act not to damage the unit more than reasonable wear and tear. I find the landlords have taken steps to estimate the cost of the replacement of the stove top and I accept their reasonable quote in this regard. I find they have taken steps to minimize expenses.

Considering the evidence and the testimony, I find the landlord has met the burden of proof with respect to this claim. Accordingly, I grant the landlord a monetary award as requested including reimbursement of the filing fee and authorization to apply the security deposit to the award.

In summary, I grant the landlord a Monetary Order of \$356.29 as requested and as summarized in the following table:

<b>ITEM</b>	<b>AMOUNT</b>
Stove top damages	\$655.40
Damages - Agreed	\$700.89
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$750.00)
(Less pet deposit)	(\$350.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$356.29</b>

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$356.29**. This Monetary Order must be served on the tenants. If the tenants fail to comply with this Monetary Order, the landlord may file the order in the Courts of the Province of British Columbia to be 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: July 16, 2021

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Residential Tenancy Branch