



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shannon Gardens Apartments and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On May 12, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agent (the “Landlord”) attended the conference call hearing; however, the Tenant did not attend at any time during the 63-minute hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on May 25, 2021. The Landlord provided the Canada Post tracking number, as noted on the Style of Cause for this Decision and confirmed via the Canada Post website that the package was delivered to the Tenant’s forwarding address on May 31, 2021. As a result, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

### Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

The Landlord provided the following terms of the tenancy:

The one-year, fixed-term tenancy began on July 27, 2005 and continued as a month-to-month tenancy. The rent was \$786.91 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$295.00. The tenancy ended on May 3, 2021.

The Landlord submitted a move-In inspection report which supported that the rental unit was in good condition with new paint upon the start of the tenancy.

The Landlord submitted a move-out inspection report and testified that they conducted the inspection with the Tenant on May 3, 2021. The Landlord submitted photos and noted that the Tenant had not moved out of the rental unit completely. The Landlord stated that the move-out inspection report along with the pictures demonstrated the extremely dirty and poor condition the rental unit was left at the end of the tenancy.

The Landlord submitted the pictures taken upon move out and referred to the following in order to provide context for the claim:

- Kitchen cabinets left with food and garbage
- Damaged counter tops and walls
- Stained fronts of cabinets and obvious grime
- Bedrooms with badly stained carpets, junk left behind, required cleaning
- Living room with badly stained carpets, dirt, garbage, and walls that required repainting due to damage from heavy smoking
- Bathroom with unreported water damage, dirty, stained cabinets
- Broken glass on closet door
- Refrigerator full of old food
- Appliances heavily used, soiled and some damage
- Personal junk left on balcony, uncleaned

The Landlord submitted a Monetary Order Worksheet with ten items for compensation. The Landlord provided testimony to support the efforts of the Landlord to restore the unit, which resulted in the need to replace almost every cosmetic item in the rental unit.

1.	Vanity, sink and shower head replacement	\$546.45
2.	Kitchen Faucet	95.19

3.	Kitchen and bathroom cabinets	4,977.00
4.	Labour for painting and to replace light fixture	920.00
5.	Materials – 2 passage sets	175.00
6.	Labour for replacing flooring, bathtub surround	3,000.00
7.	Supplies – floor underlay, tiles, flooring	1,379.55
8.	Changing door hinges on fridge	28.00
9.	New appliances	1,682.27
10.	Misc. Materials	1,099.23
	<b>Total</b>	<b>\$13,902.69</b>

The Landlord acknowledged that the Tenant lived in the rental unit for 16 years and also emphasized that the rental unit was left in extremely poor, dirty and unacceptable condition. The Landlord is requesting a Monetary Order for the damages claimed.

### Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the Landlord has the burden to prove that they suffered a loss as a result of the Tenant violating the Act or the Tenancy Agreement; demonstrate the amount or value of the loss; and prove that they acted reasonably to minimize that loss. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

Section 37 of the Act states that a tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. When the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

Based on the testimony and documentary evidence from the Landlord, I find that the Tenant failed to leave the rental unit in a reasonably clean and undamaged condition, pursuant to section 37 of the Act. As a result of the Tenant's failure to leave the rental unit in a reasonably clean and undamaged condition, I find that the Landlord suffered a loss. Nevertheless, I will be considering reasonable wear and tear after a 16-year tenancy.

*Residential Tenancy Policy Guideline #40* provides guidance for determining the useful life of building elements for considering applications regarding damages. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damages caused by a tenant, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the 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 or replacement.

Based on the Landlord's testimony and evidence, I find that a claim for damages is reasonable, that the Tenant is responsible for the damage and the Landlord has submitted estimates and receipts to support the cost for the damages, in accordance with section 67 of the Act. I don't find this is a case where the Landlord could have reasonably mitigated the damages.

Regardless of the Landlord's thorough claim and the Tenant's failed responsibilities under section 37 of the Act, I do not think it would be reasonable for the Landlord to be compensated for new building elements that would have been at the end of their normal useful life after a sixteen-year tenancy.

In the case of Item #1, the policy guideline provides that cabinets and sinks have a useful life between 20-25 years. Based on the description and photos of these items, I find that they should be replaced; however, the Landlord did not provide evidence as to

how old the cabinets were at the beginning of the tenancy. I grant the Landlord 1/5<sup>th</sup> of the claimed amount for a monetary award of \$218.58.

Item #2, a faucet has a useful life of 15 years and as this tenancy lasted 16 years, I find that the Landlord didn't suffer a loss having to replace it at the end of the tenancy. As such, I dismiss this part of the Landlord's claim.

Item #3, cabinets and counters have a useful life of 25 years. Based on the description and photos of these items, I find that they should be replaced; however, the Landlord did not provide evidence as to how old the cabinets were at the beginning of the tenancy. I grant the Landlord 1/5<sup>th</sup> of the claimed amount for a monetary award of \$995.40.

Item #4, labour for painting and to replace light fixture. The policy guideline indicates the useful life of interior paint is 4 years. If the Landlord didn't have to paint the interior of the rental unit for 16 years, I find that the Landlord did not suffer a loss when they had to repaint at the end of the tenancy. I find that the Landlord did not specifically detail the loss regarding the light fixture. As such, I dismiss this part of the Landlord's claim.

Item #5, 2 passage sets. The Landlord stated that the passage sets were damaged and indicated that they only received one set of keys when 2 sets were issued to the Tenant (see move-out report). As such, I find that the Landlord should be compensated for the full amount of the monetary claim in the amount of \$175.00.

Item #6, Labour for replacing floors, bathtub surround. The policy guideline indicates the useful life for carpets as 10 years. The Landlord didn't indicate how old the carpets, vinyl flooring or the tub surround were at the beginning of the tenancy. I find that the Landlord failed to provide sufficient evidence that they suffered a loss in regard to this part of their claim. As such, I dismiss this part of the Landlord's claim.

Item #7, supplies such as floor underlay, tiles, and flooring. The policy guideline indicates the useful life for flooring, including tiles, between 10 and 20 years. I find the Landlord did not indicate how old the flooring or tiles were at the beginning of the tenancy. As the tenancy lasted approximately 16 years, I find these building elements were at the end of their useful life. As such, I dismiss this part of the Landlord's claim.

Item #8, changing door hinges on fridge. As noted below, the fridge would have likely needed to be replaced at the end of the tenancy, regardless of the Tenant's actions. I do not find that the cost to have the hinges on the fridge changed is the responsibility of the Tenant. As such, I dismiss this part of the Landlord's claim.

Item #9, new appliances. The policy guideline references both a stove and a refrigerator and provides a useful life as 15 years. The Landlord did not provide any information as to how old these appliances were at the beginning of the tenancy. I find that the normal wear and tear on appliances over a 16-year tenancy would have left these appliances at

the end of their useful life and as such, find that the Landlord failed to provide sufficient evidence that they suffered a loss. I dismiss this part of the Landlord's claim.

Item #10. The Landlord submitted a receipt for Item #10 that included a variety of items including countertop, a toilet, cleaning solvent and hallway closet doors. The policy guideline provides that the useful life for a toilet is 20 years. The Landlord did not provide any information as to how old the toilet was at the beginning of the tenancy. I find that the vague description of this claim does not meet the requirement of section 67 where the Landlord is responsible to provide evidence that can verify the actual monetary amount of the loss or damage. As such, I dismiss this part of the Landlord's claim.

I have denied much of the Landlord's claim based on the length of the tenancy, the useful life of the building elements and the fact that the Landlord failed to provide details as to how old some of these items were at the beginning of the tenancy. However, I find that the Landlord did provide sufficient evidence to demonstrate that the Tenant left the rental unit in a condition, contrary to section 37 of the Act. I accept the rental unit was left dirty, damaged and unfit for new tenants. Regardless of the significant renovations and repairs that the Landlord was required to complete because so many of the building elements were at the end of their useful life, I find that the Landlord deserves an award for nominal damages in the amount of \$500.00 to acknowledge the extra efforts and cost incurred as a result of the Tenant's breach of section 37 of the Act.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover damages and the filing fee for this Application, and to retain the Tenant's security deposit, pursuant to section 72 of the Act:

1.	Vanity, sink and shower head replacement	\$109.29
2.	Kitchen Faucet	00.00
3.	Kitchen and bathroom cabinets	995.40
4.	Labour for painting and to replace light fixture	00.00
5.	Materials – 2 passage sets	175.00
6.	Labour for replacing flooring, bathtub surround	00.00
7.	Supplies – floor underlay, tiles, flooring	00.00
8.	Changing door hinges on fridge	00.00
9.	New appliances	00.00
10.	Misc. materials (toilet)	00.00

	Nominal damages	500.00
	<b>Sub-total</b>	<b>\$1,779.69</b>
	Filing Fee	100.00
	Minus security deposit	-295.00
	<b>Total</b>	<b>\$1,584.69</b>

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,584.69. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: November 17, 2021

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Residential Tenancy Branch