



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEROSO INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 18, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

K.E.B. and C.L. appeared at the hearing as agents for the Landlord (the “Agents”). The Tenant appeared at the hearing with B.F. to assist. The Tenant appeared for all Tenants.

At the outset of the hearing, the Tenant asked that D.O., a sub-tenant, be added to the Application. I denied this request as there is no contractual relationship between a landlord and a sub-tenant (see Policy Guideline 19, page 3). The Tenant asked that D.O. be a witness and I advised that this was fine. I had D.O. exit the conference call until the end of the hearing at which time I heard from D.O. as a witness.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Paint	\$136.62
2	Repair water damage in upper bathroom and paint, sand patches and paint living room	\$220.00
3	1 window blind, bath stopper, sink strainer, light bulbs, light cover	\$65.45
4	1 key	\$5.00
5	Countertop	\$1,026.62
6	Sink	\$150.00
7	Replacing wall tiles above the countertop	\$200.00
8	Extra cleaning (baseboards, sliding door tracks)	\$20.00
9	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,923.69</b>

Two written tenancy agreements were submitted as evidence. The tenancy started May 01, 2019. The parties agreed rent was \$3,180.00 per month. The parties agreed the Tenants paid a \$1,550.00 security deposit.

The parties agreed the tenancy ended April 30, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlord by email May 11, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security deposit.

The parties agreed on the following. The Tenants rented the unit for two years. A move-in inspection was done at the outset of the tenancy. When the parties completed a new written tenancy agreement, they agreed that the original Condition Inspection Report (the "CIR") still applied. The CIR in evidence is accurate.

The parties agreed they did a move-out inspection April 30, 2021 and that the CIR in evidence is accurate.

The parties took the following positions about the items claimed by the Landlord.

***#1 Paint \$136.62***

The Landlord sought the cost of materials for painting two areas that were damaged at the end of the tenancy including the upstairs bathroom and living room wall. The Landlord testified that they purchased the least expensive paint they could and referred to the Canadian Tire receipt in evidence. The Landlord also relied on a letter and receipt from a handyman.

The Tenant submitted that the paint costs sought are for reasonable wear and tear. The Tenant submitted that the CIR shows there were scratches on the walls from before the Tenants moved in. The Tenant testified that the Tenants sublet the unit to D.O. for one year.

***#2 Repair water damage in upper bathroom and paint, sand patches and paint living room \$220.00***

The Landlord sought the cost of labour to repair the two areas that were damaged, the upstairs bathroom and living room wall. The Landlord testified that they used a handyman to do the repairs rather than a specialized painter which would have cost more.

The Tenant relied on their submissions in relation to item #1 and added that the rental unit was old and water damage occurred early in the tenancy; however, nothing was done about it until the move-out inspection.

**#3 1 window blind, bath stopper, sink strainer, light bulbs, light cover \$65.45**

The Landlord sought costs associated to replacing missing light bulbs at the end of the tenancy as well as replacing damaged blinds. The Landlord relied on the Home Depot receipt in evidence.

The Tenant agreed that the items referred to had to be replaced.

**#4 1 key \$5.00**

The Tenant agreed to pay this amount.

**#5 Countertop \$1,026.62**

The Landlord sought the cost of replacing the countertop in the kitchen which D.O. had burned. The Landlord testified that the countertop was laminate, approximately five years old and in good condition at the start of the tenancy. The Landlord submitted that the countertop could not be cut and a new piece put in where the burn mark was. The Landlord testified that they asked the Tenants to provide a less expensive quote; however, they did not do so until after the Landlord had already paid to replace the countertop. The Landlord relied on an email in evidence about quotes. The Landlord testified that they tried to keep the cost down and contacted other companies about replacing the countertop for less; however, they were not able to find a cheaper viable option. The Landlord acknowledged that the Tenant has now submitted a quote that is less expensive; however, the Landlord raised issues with the lack of detail regarding what the quoted cost included, such as installation.

The Tenant submitted that the damage to the countertop was only a small section and barely noticeable. The Tenant testified that the burn did not inhibit the use of the counter. The Tenant submitted that the cost claimed is excessive for what happened in relation to the burn on the counter. The Tenant testified that the counter seemed really old without having had repairs in a long time.

B.F. submitted that the rental unit is very old and the issue of betterment should be considered. B.F. took issue with the Landlord installing a \$1,000.00 countertop in a small kitchen in a very low quality house.

In reply, the Landlord disagreed that the rental unit was old and testified that it had been renovated since it was built.

***#6 Sink \$150.00***

The Landlord sought the cost of installing a new sink in the kitchen and testified that the old sink could not be used when the new countertop was installed.

The Tenant testified that the sink was installed wrong to begin with and submitted that it is not the Tenants' responsibility to pay for the new sink.

B.F. submitted that there was no damage to the sink and the new countertop could have been cut to the shape and size of the old sink.

In reply, the Landlord said he spoke to someone about the sink and counter and they said the sink was glued to the counter and could not be removed.

In further reply, B.F. submitted that the person who installed the new countertop likely said a new sink was required for expedience and not because it was required.

***#7 Replacing wall tiles above the countertop \$200.00***

This was withdrawn by the Landlord.

***#8 Extra cleaning (baseboards, sliding door tracks) \$20.00***

The Landlord sought \$20.00 for cleaning baseboards and a sliding door railing.

At first, the Tenant agreed with paying this amount. However, B.F. then disputed the claim based on the sliding door being broken and not working during the tenancy as well as the time it took the Landlord to repair the door. The Tenant testified that they think the Tenants cleaned the sliding door railing at the end of the tenancy.

***Witness***

Both parties asked D.O., the witness, questions. D.O. testified as follows.

They do not know about issues with the upstairs bathroom because they did not use it. It is new to them that the living room required painting.

There were no posters on the wall in the living room when they were living in the rental unit. They did not notice white patches on the living room wall; however, they did not pay attention because they did not use the living room much.

They left a hot pot on the counter for 20 seconds and there was a visible mark left when they lifted the pot. The mark did not impact their use of the kitchen. They obtained a quote to repair the burned spot without replacing the counter for \$375.00 + tax. The company who provided the quote said they could cut out the damaged section of the counter and reconnect the panel to the rest of the counter with the same material and minimum visibility. They checked with other companies prior to obtaining the quote which primarily suggested replacing the counter because they did not perform the type of repair reflected in the quote.

### ***Documentary Evidence***

The Landlord submitted the following relevant documentary evidence:

- Receipts
- A letter from A.K., a repair person
- The CIR
- Agreements about the CIR
- Quotes
- Emails
- The tenancy agreements and related documents

The Tenants submitted a quote for the countertop repair.

### **Analysis**

#### ***Security deposit***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties and the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for a missing key and cleaning, neither of which are damage.

Based on the testimony of the parties, I accept that the tenancy ended April 30, 2021.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlord by email May 11, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from May 11, 2021 to repay the security deposit or file a claim against it. The Application was filed May 18, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

### ***Compensation***

Section 7 of the *Act* states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 37 of the *Act* states:

(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...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Policy Guideline 1 defines reasonable wear and tear as follows (page 1):

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).



Reasonable wear and tear refers 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.

### ***CIR***

Tenant A.S. signed the CIR for the Tenants and agreed with it at move-in and move-out. The CIR is evidence of the state of the rental unit at move-in and move-out unless the Tenants provide a “preponderance of evidence to the contrary” (section 21 of the *Regulations*). I do not find the testimony of the Tenant and B.F. to be a “preponderance of evidence to the contrary” in the absence of documentary evidence to support it. There is no documentary evidence before me that calls into question the accuracy of the CIR. I accept that the CIR is accurate as it relates to the condition of the rental unit at move-in and move-out.

### ***#1 Paint \$136.62***

### ***#2 Repair water damage in upper bathroom and paint, sand patches and paint living room \$220.00***

The CIR shows that the walls and trim in the living room had “some marks” at move-in and had white patches that needed painting at move-out. The letter from A.K. states that they repaired “over a dozen white patches on light brown colored walls in the living room” at the end of the tenancy. Based on the testimony of the Landlord, CIR and letter from A.K., I accept that the Tenants caused further damage to the walls of the living room during the tenancy. I find white patches on light brown colored walls is beyond reasonable wear and tear. I accept that the Tenants breached section 37 of the *Act*.

The CIR shows that the walls and trim in the upper bathroom had “some marks” at move-in and that the wall near the bathtub was very wet at move-out. The letter from A.K. states that they repaired “water damaged drywall in [the] upper bathroom near the bathtub” at the end of the tenancy. Based on the testimony of the Landlord, CIR and letter from A.K., I accept that the Tenants caused further damage to the wall of the upper bathroom during the tenancy. I accept that the water damage was caused by the

Tenants given it is noted as an issue on the CIR. I find water damage to walls is beyond reasonable wear and tear and accept that the Tenants breached section 37 of the *Act*.

Given the nature of the damage, I accept that the Landlord had to have the living room and upper bathroom walls repaired and painted and therefore suffered loss. I accept based on the receipts in evidence that the materials to repair the damage cost \$136.62 and the labour cost \$220.00. I find these amounts reasonable and award the Landlord these amounts.

I note that it is irrelevant that the Tenants sublet the rental unit to D.O. because the Tenants remained responsible to the Landlord for any damage beyond reasonable wear and tear done during the tenancy, whether by them or D.O.

**#3 1 window blind, bath stopper, sink strainer, light bulbs, light cover \$65.45**

The Tenant agreed that the items referred to had to be replaced and did not dispute this claim and therefore I award the Landlord the amount sought.

**#4 1 key \$5.00**

The Tenant agreed to pay the amount sought and therefore I award the Landlord the amount sought.

**#5 Countertop \$1,026.62**

There is no issue that D.O. burned the counter during the tenancy by placing a hot pot on it. I find burning the counter by placing a hot pot on it is beyond reasonable wear and tear and I find the Tenants breached section 37 of the *Act*.

I find based on the photo attached to the email quote submitted by the Tenants that the burn mark was visible although I acknowledge that some areas of the countertop only suffered textural damage versus discoloration.

I accept that the burn mark did not adversely affect the use of the counter; however, I do not find that the *Act* requires that the use of an item be affected for the Landlord to obtain compensation. All that is required is that the Tenants caused damage beyond reasonable wear and tear, which the burn mark clearly is, and that the Landlord suffered

loss. Here, the loss is the decrease in value of the countertop which is an obvious result of it having a visible burn mark.

In relation to the amount or value of the damage or loss, I accept that it cost the Landlord \$1,026.62 to replace the countertop based on the quote in evidence, which is slightly higher.

In relation to mitigation, I accept that the Landlord did what was reasonable to keep the cost of replacing the countertop to a minimum. I accept the statement in the letter from A.K. that the countertop could not be repaired because A.K. attended the rental unit and would have been able to observe the countertop. I accept that the Landlord sought out more than one quote because the Landlord has submitted quotes from three different companies. I accept that the amount claimed was the least expensive viable option based on the quotes provided by the Landlord.

I acknowledge that the Tenants submitted a quote for \$375.00 + tax to repair the countertop. However, I do not accept that the Landlord was required to choose the least expensive option even if that meant compromising a proper repair of the countertop. I do not accept based on the evidence provided that cutting out a piece of the damaged countertop and putting in a new piece is a proper repair. As stated, I accept the statement of A.K. that the countertop could not be repaired and I place more weight on it than the quote from the Tenants which is based on a photo of a small section of the counter, the damaged section. Further, D.O. acknowledged that they reached out to other companies about the countertop and that they advised that the countertop needed to be replaced and I find this is a reasonable position given this is what both D.O. and the Landlord were told. Further, I do not find the email quote submitted by the Tenants to be detailed about what the work would entail or the company's experience in repairing countertops. I place more weight on the quotes from the Landlord which do outline the work to be done. In summary, I do not accept that the quote provided by the Tenants is for a comparable and proper repair and I do not find it reasonable to expect the Landlord to have completed a sub-par repair of the countertop.

I do not find the general state of the rental unit relevant. The issue is the state of the countertop at the start of the tenancy versus the end of the tenancy. Here, the countertop was laminate at move-in and the Landlord obtained quotes for a laminate countertop. There is no compelling evidence to show that the Landlord is seeking the cost of installing a more valuable countertop than what was there at move-in.

I do find the age of the countertop relevant given Policy Guideline 40 which outlines the useful life of building elements. I accept the Landlord's testimony that the countertop was five years old for the following reasons. I had no concerns about the reliability or credibility of the Landlord's testimony throughout the hearing. The CIR shows that the countertop was in good condition at move-in which supports the Landlord's position. I have considered the photo of the countertop attached to the email quote from the Tenants and do not find that it supports that the countertop was more than five years old. I find the Landlord is in a better position to know the age of the countertop than the Tenants. The Tenant and B.F. simply gave general testimony about the house and counter being old or very old without stating a specific age or basis for this knowledge.

Pursuant to Policy Guideline 40, the useful life of counters is 25 years. Taking this into account, I award the Landlord \$821.30 for the countertop.

**#6 Sink \$150.00**

I find the CIR does not show that the sink in the kitchen was damaged at move-out. The parties took different positions about whether the original sink could have been used with the new countertop. The documentary evidence before me does not explain why a new sink was required and therefore, I am not satisfied one was. I do not find the Tenants responsible for this amount. This request is dismissed without leave to re-apply.

**#8 Extra cleaning (baseboards, sliding door tracks) \$20.00**

I find the parties disagreed about whether the Tenants are responsible for this amount. The CIR does not show that areas of the rental unit were dirty at move-out. There is no other documentary evidence before me showing areas of the rental unit were left dirty at move-out. In the circumstances, I am not satisfied areas of the rental unit were left dirty and am not satisfied the Landlord is entitled to this amount. This request is dismissed without leave to re-apply.

**#9 Filing fee \$100.00**

Given the Landlord was partially successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

### **Summary**

In summary, the Landlord is entitled to the following:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Paint	\$136.62
2	Repair water damage in upper bathroom and paint, sand patches and paint living room	\$220.00
3	1 window blind, bath stopper, sink strainer, light bulbs, light cover	\$65.45
4	1 key	\$5.00
5	Countertop	\$821.30
6	Sink	-
7	Replacing wall tiles above the countertop	Withdrawn
8	Extra cleaning (baseboards, sliding door tracks)	-
9	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,348.37</b>

The Landlord can keep \$1,348.37 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$201.63 of the security deposit to the Tenants and the Tenants are issued a Monetary Order in this amount.

### **Conclusion**

The Landlord is entitled to \$1,348.37 and can keep this from the security deposit. The Landlord must return the remaining \$201.63 of the security deposit to the Tenants and the Tenants are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: November 25, 2021

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Residential Tenancy Branch