



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S.  
LTD and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's agent gave the following testimony. The tenancy began on July 23, 2018 and ended on June 30, 2021. The tenants were obligated to pay \$3280.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1600.00 security deposit which the landlord still holds. Written move in and move out condition inspection reports were conducted with both parties present.

The agent testified that the tenants did not run the self-cleaning function on the oven until the end of the inspection, requiring her to spend two extra hours of her time to monitor and complete the cleaning. The agent seeks two hours of her time at \$65.00 per hour for a claim of \$130.00 for the cleaning. The agent testified that the tenant broke a sliding mirrored door in the bedroom. The agent testified she's not sure how much it cost to replace but she believes it to be between \$500.00 and \$850.00. The agent asks for anything in that range on behalf of the owner.

The tenant gave the following testimony. The tenant testified that the agent agreed to monitor the self-cleaning oven cycle. The tenant testified that the agent didn't mention that she would be charging him for just being in the suite. The tenant testified that he did damage the sliding mirror door but felt the amount sought was excessive for the age of the door. The tenant testified that the agent did not provide a final price for the replacement. The tenant testified that he is asking for his full deposit to be returned.

### Analysis

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 that 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 claimant

must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

### *Sliding Mirrored Door*

The landlord's agent testified that the building was built in 1992 and that it was the original door. The agent was unsure of the actual final cost of to replace the door. Residential Tenancy Policy Guideline 40 lists the useful life of a door at 20 years. I find that the door had exceeded the useful life. In addition, as the landlord's agent was unable to provide the exact amount to replace the door, I must dismiss this portion of their claim.

### *Cleaning*

The agent testified that she assisted the tenant in cleaning the fridge as well as stay in the unit for two hours of her own time to ensure the self-cleaning function for the oven was completed. The agent testified that she seeks \$65.00 per hour for two hours for a total claim of \$130.00.

The tenant testified that the agent offered to assist and there was not indication that she was expecting payment.

The condition inspection report details the deficiencies, damages and costs sought by the landlord. However, there is no mention of time required to stay for the oven cleaning. I find that the landlord has not provided sufficient evidence to support this claim, accordingly; I dismiss this portion of their application.

The landlord has not been successful in this application.

The landlord's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord is to return the \$1600.00 security deposit back to the tenants. I grant the tenants an order under section 67 for the balance due of \$1600.00. This order may be filed in the 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: January 20, 2022

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Residential Tenancy Branch