



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, MNRL-S, FFL**

MNSD, MNDCT, FFT

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”).

The landlord applied for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by an agent, AD. The tenant’s agent advised me that he had full authority to represent the landlord, engage in mediation and Act as the landlord’s agent in presenting evidence. The landlord’s agent also read in a letter from the landlord asking that I accept AD as his representative for the hearing or, if I was unwilling to accept AD as his representative, to seek an adjournment of the hearing. I advised the parties that as the

landlord's agent, DA may, as outlined in Policy Guideline PG-26 [Advocates, Agents and Assistants]:

- Apply for dispute resolution on behalf of the landlord or tenant
- Prepare, organize, serve and submit evidence
- Make submissions on behalf of the party
- Ask questions of the other party and witnesses with respect to their evidence
- Settle claims

DA indicated he was prepared to do this on behalf of the landlord. I cautioned the landlord's agent that while he can make submissions on behalf of the landlord, I would be mindful that his testimony regarding issues the agent was not directly involved in may be less credible than the testimony of the tenant who may have first-hand knowledge of events. The landlord's agent testified he understood and agreed. Based on this acknowledgement, I accepted DA to *Act* as the landlord's agent for this hearing.

At the commencement of the hearing, the tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and the landlord's agent acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package. Both stated they had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

What, if any, compensation is the landlord entitled to?

What, if any, compensation is the tenant entitled to?

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed some of the issues between them, turned their minds to compromise and achieved a resolution of certain portions of their disputes.

The parties agree the landlord is entitled to the following items listed on the landlord's monetary order worksheet:

number	Item	Amount
1	BC Hydro	\$92.00
2	Fortis Gas	\$18.02
4	Lightbulb replacement	\$20.00
9	Late fee for July rent	\$25.00
	Total	\$255.02

The tenant testified that she and the landlord had an agreement that the landlord could retain her security deposit in the amount of **\$1,325.00** in full settlement of the outstanding half month's rent for the period of July 1 to July 15, 2021 (#8 on the landlord's monetary order worksheet). As such, I order pursuant to section 72 of the *Act*, the landlord is to retain the tenant's entire security deposit. I find the outstanding rent portion of the landlord's application for dispute resolution has been fulfilled.

The remaining issues on the landlord's application for dispute resolution are:

Number	Item	Amount
3	Oven glass replacement	\$106.40
5	Patio door handle replacement	\$89.59
6	Labour hours for repairs	\$200.00
7	Carpet cleaning	\$179.00

The tenant seeks the following items on her cross application:

Item	Amount
Hazardous sticks on property	\$200.00
Oven not working properly	\$600.00
Broken front door hardware	\$50.00
Items under sink when during repair	\$100.00

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A. The landlord's claims

3	Oven glass replacement	\$106.40
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Landlord: the oven was in good condition at the commencement of the tenancy and turns to the move-in condition inspection report as evidence of the condition at commencement. He also provided a photo of the broken oven glass and an invoice for the replacement glass.

Tenant: the oven glass was broken at the commencement of the tenancy, however she didn't consider it to be an issue as she was willing to live with it.

5	Patio door handle replacement	\$89.59
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Landlord: The patio door handles were broken during the tenancy.

Tenant: They were already broken at the commencement of the tenancy. The rental unit is old, built in the '70's and the lock on the bottom of the track worked, so the tenant was willing to live with it as well.

The tenant testified that the patio door handle issue and the broken oven door issues were not listed on the condition inspection report when she signed it. The tenant alleges that the landlord made changes to the condition inspection report after it was signed by her and that the landlord didn't send her a copy of it until July 29th by email, even though the walkthrough took place on July 15th.

6	Labour hours for repairs	\$200.00
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Landlord: during the hearing, the landlord's agent was unable to direct my attention to any evidence for the landlord's claim for labour.

Tenant: The landlord is in the business of deriving income from rentals, so it is to be expected that the landlord would be required to put in labour between tenants.

7	Carpet cleaning	\$179.00
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Landlord: The tenant should have had the carpets professionally cleaned and provided the landlord with written proof that she hired a professional to do it.

Tenant: Her father owns a professional carpet cleaning machine. She has submitted photographs of the machine and of her father cleaning the carpets into evidence.

B. The tenant's claims

Hazardous sticks on property	\$200.00
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Tenant: In October, the landlord trimmed trees and left the sticks on the property. On Christmas eve, the landlord filled the organics bin with the sticks, leaving no room for the tenant or the tenants in the other unit to dispose of their organic waste. The tenant testified she gave a friend \$200.00 to take some of the smaller sticks away, but she has no receipt to prove it.

Landlord: The landlord's agent referred to a written statement from the landlord (not provided as evidence) which says the landlord hired a cleaning service on January 13, 2021 to remove the branches and clean gutters.

Oven not working properly	\$600.00
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Tenant: On March 7, the tenant notified the landlord via text message that the oven was "acting weird" and would need replacement within the next year. She sent another text on June 14th, advising that the oven doesn't turn off after using it. In testimony, the tenant testified that the stovetop worked fine, but the oven acted "funny" and would sometimes not turn off, but that she could "sometimes" use it. The tenant was unable to justify how she arrived at \$200.00 per month reduction for the three months she didn't use the oven, stating that she doesn't know how to monetize it. It's a subjective estimate.

Landlord: the agent, reading from the statement, indicated that the landlord was able to repair the oven by simply cleaning the sticky switches on June 14th. The landlord had agreed to fix the oven however wanted to wait until restrictions due to the pandemic were lifted in order to do so.

Broken front door hardware	\$50.00
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No testimony was heard regarding this portion of the tenant's claim, although the tenant's summary of claims states she paid \$50.00 to a friend to fix the front door. No receipt was provided.

Items under sink when during repair	\$100.00
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Tenant: On June 14th, the landlord attended the rental unit and replaced a sink in the tenant's bathroom. The tenant was home at the time, but the landlord did not ask her to remove items stored under the sink. When the landlord finished, there was sawdust on her personal items which had to be replaced. The amount of \$100.00 is an estimate of the value of the items.

Landlord: the area under the sink was cleaned by the landlord after he finished replacing the sink. There was sawdust on the children's toothbrushes and he apologized to the tenant for it. The tenant never complained to him about it afterwards.

Analysis

Section 7 of the *Act* states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 21 of the regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

A. The landlord's claims

3	Oven glass replacement	\$106.40
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I find that on a balance of probabilities, the oven glass was not broken at the commencement of the tenancy, as argued by the tenant. I would expect that the tenant would have notified the landlord immediately upon moving in that it was broken, due to the safety issues of being cut by broken glass or having broken glass fall into her food. I find the landlord mitigated his expenses by choosing to replace the glass rather than purchasing a new stove. I find the landlord is entitled to recover the **\$106.40** he seeks pursuant to section 67 of the *Act*.

5	Patio door handle replacement	\$89.59
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I accept that the landlord had to replace the patio door handle on the sliding glass door which may have broken during the tenancy. However, given the age of the rental unit which the landlord did not dispute as being from the '70's, I find the patio door had exceeded its useful life which is between 15 and 20 years according to Residential Tenancy Branch Policy Guideline PG-40 [Useful life of Building Elements]. As such, I do not grant the landlord's claim for replacement of the patio door handle.

6	Labour hours for repairs	\$200.00
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The landlord's agent was not able to present evidence or testimony to satisfy me the landlord should be compensated for his labour. Nor was the landlord's agent able to justify what work was done, either by directing my attention to documentary evidence or by testimony. I find there to be insufficient evidence to satisfy me the existence of the damage or loss (point 1 of the 4 point test) and I do not grant this portion of the landlord's claim.

7	Carpet cleaning	\$179.00
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Residential Tenancy Branch Policy Guideline PG-1 [Landlord and Tenant – Responsibility for Residential Premises] states:

Carpets: The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Based on the evidence before me, I am satisfied the tenant steam cleaned the carpets as necessary to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, as required under section 37 of the *Act*. I do not grant this portion of the landlord's claim.

I find the landlord is entitled to the agreed upon sum of \$255.02, plus an award of \$106.40 for the broken oven glass for a total of **\$361.42** pursuant to section 67 of the *Act*.

B. The tenant's claims

Hazardous sticks on property	\$200.00
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The tenant describes a situation whereby she was denied use of her organics bin and had to dispose of her organics in the regular trash. She also alleges she paid a friend to dispose of what she describes as small sticks for \$200.00, although she does not deny the landlord was able to have the larger branches removed at his own cost of \$60.00. I

find the tenant has provided insufficient evidence to prove the existence of the damage or loss, based on her inability to provide a receipt for the amount paid to the friend (point 1 of the 4-point test). Second, the tenant did not satisfy me that the landlord's action of filling up the organics bin with organic matter was more than an inconvenience to her, rather than a true violation of the Act, regulations or tenancy agreement. (point 2 of the 4 point test). For these reasons, I dismiss this portion of the tenant's claim.

Oven not working properly	\$600.00
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The first notification of the oven issue was the text from the tenant on March 7th, whereby she states the oven is "weird and may need to be replaced within the year". I find no follow-up communication from the tenant any time after that asking that the oven be fixed immediately; that there was any urgency to having repairs done; or that the oven was not functional. The next communication originates from the landlord on June 14th, asking what the issue is. I find the tenant has failed to mitigate the damage by not pursuing the issue of the oven. (Point 4 of the 4 point test).

Moreover, the landlord's agent indicated the landlord was able to fix the oven by simply cleaning the sticky switch which I find could have reasonably been done by the tenant, herself. I do not find there is a violation of the the Act, regulations or tenancy agreement by the landlord. (point 2 of the 4-point test).

Lastly, the tenant acknowledges she was unable to quantify how she arrived at \$200.00 per month for the oven she alleges she didn't use for 3 months. (Point 3 of the 4-point test). For these reasons, I dismiss this portion of the tenant's application.

Broken front door hardware	\$50.00
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The tenant did not provide testimony or direct my attention to any evidence to prove the existence of this portion of her claim. As such, I find insufficient evidence to justify granting this item, and I dismiss it.

Items under sink when during repair	\$100.00
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The tenant described an incident whereby her possessions were covered in sawdust, however the only evidence of what was stored under her sink was a photograph depicting some nail polish and a package of unopened toilet paper. I find insufficient evidence to satisfy me the existence of damage to the tenant's items (point 1) and an inability to quantify the damages sought (point 3). This portion of the tenant's claim is dismissed.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the filing fees of both parties will not be recovered.

Conclusion

The landlord is to retain the tenant's security deposit in the amount of \$1,325.00 in satisfaction of the arrears in rent from July 1 to July 15, 2021 pursuant to section 72 of the *Act*.

I issue a monetary order in the landlord's favour in the amount of **\$361.42**. The tenant must be served with this Order as soon as possible. Should the tenant 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 11, 2022

Residential Tenancy Branch