



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on August 5, 2021 seeking compensation for damage caused by the former Tenant during the tenancy. They also seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 17, 2022.

The Landlord attended the conference call hearing; the Tenant did not attend. I explained the process and the Landlord had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matter

The Landlord applied for an order from the Residential Tenancy Branch allowing for substituted service. An arbitrator granted that form of service via email on August 17, 2022.

The Landlord sent notification of this hearing to the former Tenant (hereinafter, the “Tenant”) via email on August 23, 2022. This included their prepared evidence they rely on to prove their claim. A record of this outgoing email to the Tenant is in the Landlord’s evidence as proof of this service.

From this information, I am satisfied the Landlord notified the Tenant of this hearing. The hearing proceeded in the Tenant’s absence, as allowed by Rule 7.3 in the *Residential Tenancy Branch Rules of Procedure*.

### Issues to be Decided

Is the Landlord eligible for damage compensation, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement in place between the parties, signed by the Tenant on March 9, 2020 and the Landlord on March 12, 2020. This was for a fixed term, set to end on August 31, 2020. The Landlord agreed to a lease extension through to February 2021. The rent amount was \$5,900, and the Tenant paid a security deposit of \$2,900. This was for a furnished apartment, and the rent included a maid service one time per month, Wi-Fi and cable television service.

The addendum to the agreement provides that “the Tenant must pay for a professional move-out clean or have the Rental Unit and applicable areas of the Residential Property delivered in a similar industry standard of cleanliness.” This lists 14 separate points for specific things to clean and the method for doing so, and also defines “normal wear and tear.”

The tenancy ended when the Tenant moved out from the unit without informing the Landlord in February 2021. The Landlord received an email from the Tenant on February 22, 2021, informing the Landlord they had already moved out. They noted they advised the Landlord of this via registered mail letter on February 17 which the Landlord had not received at the time of the email. The Tenant stated: “. . .we propose that you apply the \$2900 deposit as full and complete satisfaction of the end of our lease.” The Landlord replied to state that by law the Tenant is properly giving notification for the end of March, and not February. In their written account, the Landlord stated: “The email proposed that we keep the deposit of \$2,900 in lieu of the March rent since there wasn’t any notice given until after she had vacated, which we reluctantly accepted. It was only 7 days notice if the email was even an acceptable way of giving notice.”

The Landlord responded to this to request professional cleaning and stated the security deposit would apply to damages discovered “upon move out inspection which is part of the process that needs to be done and at the same time the keys returned.” The

Tenant's sister arrived at the rental unit and met with the Landlord to complete a final inspection of the rental unit, on February 26, 2021.

The Landlord provided a copy of the 'Condition Inspection Report' that details the condition of the rental unit at the start and at the end of the tenancy upon that final inspection meeting. The Landlord noted the condition of leather furniture, 3 cracks in wall mirrors, the stainless-steel countertop badly scratched, and missing hangers. The Landlord listed specifically a \$250 move-out fee as per the building/strata rules, a \$360 cleaning fee, cracked mirror replacements, countertop buff by a professional service, refurbishing of leather furniture. The Tenant's sister signed to indicate they agreed the report fairly represented the condition of the unit at the end of the tenancy. The report also contains the Landlord's notation: "Tenant agreed in writing to forfeit security deposit due to late notice."

At the start of the tenancy, the Landlord provided a furnished rental unit, as per the agreement. The Tenant asked for space and removal of the Landlord's furniture to place their own furniture therein. The Landlord could not allow or agree to this, with no space for their own furniture to accommodate this request.

The Landlord visited to the rental unit in December and entered when there was no response to their knocks on the door. They found the Tenant inside the rental unit, with different furniture inside, and smoking which was counter to the agreement in place. The Tenant, via another family member, stated that smoking was a single incident; however, the Landlord's own cleaning service provided that they observed remnants of cigarettes on a regular basis.

The Landlord provided pictures showing damage to the wall mirrors, the leather furniture, the countertop, and the messy state of the rental unit, with "no cleaning at all." The Tenant's other contact had stated verbally to the Landlord that they would cover the cost of cleaning.

The Landlord emailed to the Tenant directly on June 7, 2021, setting out a list of damages and the amounts owing. They revised this list in their oral testimony in the hearing, in combination with other evidence they prepared.

#	Item(s)	\$ claim
1	2 badly stained leather chairs	1,000.00
2	replacement sofa *revised	2,127.99
3	cracked wall mirrors three places *revised	1,830.31

4	refinish stainless steel countertop	3,004.89
5	pot replacement	400.00
6	silk hangers	80.00
7	cleaning	360.00
8	tv service viewing on demand	80.64
<b>Total</b>		<b>8,855.84</b>

- 1 In their written account the Landlord described one of the large chairs as being “unrecognizable”, “bleached white and had spray marks of an unknown substance.” If the furniture was stored elsewhere – as stated to the Landlord – it “clearly didn’t have a protective wrap on them as professional movers use”. The Landlord provided photos showing spotted and stained surfaces of the chairs. Additionally, they provided a leather, vinyl & plastic repair firm, stating “If the leather is in good condition and it will take dye we can re-dye them for \$500 per chair.”
- 2 The original sofa was stored by the Tenant along with the chairs. The Landlord had an evaluation of the sofa completed; however, they purchased another sofa for the total amount of \$2,127.99 as shown in the receipt for that purchase dated August 17, 2021. The Landlord provided photos of the stained and damaged sofa showing edges and surfaces scratched, scraped, and stained. The Landlord had an evaluation of the sofa completed; however, they purchased another sofa for the total amount of \$2,127.99 as shown in the receipt for that purchase dated August 17, 2021
- 3 The Landlord provided an estimate from a professional for \$3,012.34, dated March 1, 2021. This is for mirror replacement pieces, adhesive and installation. They provided images of three separate wall mirror panels showing cracks, either across the surface or on the edges of individual panels. The Landlord replaced one of the cracks they found in the mirrors on March 29, for \$1,181.53. They did not provide the receipt showing this work completed. In the hearing they proposed a reduction of their full claim for mirror repair from \$3,012.34.
- 4 There is also a quotation from a stainless-steel restoration firm, dated March 11, 2021. This was based on a visit by that firm to the rental unit. This shows the amount of \$3,004.89 for refinishing to the countertop. A service agent visited to the rental unit to inspect the countertop surface, commenting to the Landlord that this is what would normally be seen in a restaurant kitchen, speculating that cutting was occurring directly on the stainless-steel surface.
- 5 The Landlord claimed for a missing pot and provided a search result for the same item with the price of \$400.

- 6 Additionally, the Tenant removed silk-embroidered hangers from the rental unit and pledged to return them; however, they did not, and the Landlord provided the price of \$80 for their claim.
- 7 The Landlord provided the cleaning invoice dated February 28, 2021, showing the cost of cleaning for \$360 that took place on February 25. They provided photos from miscellaneous points around the unit showing the need for cleaning. The \$360 amount – which the Tenant via their sister agreed to – is listed on the Condition Inspection Report. The Landlord did not fully list the cleaning needs for each separate room on the document.
- 8 The Landlord also discovered the Tenant had rented pay-per-view on their cable bill and did not pay for those extra services, for the cost of \$80.64. The Landlord provided a cable provider invoice showing the amount of \$71.98 from October-November 2020.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss 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.

Using this framework, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

- 1 From the Landlord's description and evidence, I am satisfied there was damage to the chairs as they presented. I find furniture was provided by the Landlord and this was part of the tenancy agreement; therefore, damage to the furniture constitutes damage to the rental unit. I grant the Landlord \$500 per chair for repair and dyeing.

- 2 I find the Landlord made an effort at minimizing their damage by purchasing a separate sofa. This was in a relatively timely manner. From the photos, I am satisfied there was damage to the sofa attributable to the Tenant. I grant the Landlord reimbursement for their sofa purchase.
- 3 I find the Landlord presented evidence of damage to the mirrors. They already made an immediate replacement for the most badly damaged mirror. I accept their testimony that they paid; however, without proof of that payment, I revert to the Landlord's original claimed amount as provided by a glass repair firm. This amount in full is \$3,012.34. Given this estimate involved a site visit, I am satisfied of its accuracy in terms of replacement mirrors and work needed to restore the pieces to their original condition.
- 4 I am not satisfied of the need for refinish of all stainless-steel surfaces in the Landlord's kitchen area. They provided a price quotation for refinishing of all surfaces; however, the image they provided shows a discrete area that would presumably need some work. I find the Landlord did not minimize their claim; therefore, I grant no award for this piece.
- 5 There was no list of all items within the rental unit that are the property of the Landlord. This would alleviate discrepancies between the personal property of the Tenant and that of the Landlord. Kitchen items are one example. The Landlord was not able to show the pot was originally their own property and this would not normally constitute furniture as part of a furnished rental unit. I grant no award for a pot replacement at a higher-end cost.
- 6 Similarly for hangers, there is no record of hangers originally belonging to the rental unit as part of the Landlord's property. I grant no award for replacement hangers.
- 7 I accept that the Tenant agreed to reimbursement of an extra cleaning cost at the end of the tenancy. This was set out on the Condition Inspection Report, and the Tenant's representative who attended for the inspection meeting agreed to this. I award this claimed amount to the Landlord.
- 8 The evidence of the Landlord for extra services used by the Tenant does not match to their claimed amount. The Landlord did not provide sufficient evidence to show the monetary loss to them. Further, the expense is from months prior to the end of tenancy; it is not known why the Landlord did not alleviate the need for this claim by ensuring payment by the Tenant earlier. I grant no award for this piece of the Landlord's claim.

In full, I grant the Landlord a monetary order of \$6,500.33 in satisfaction of their claim. Because they were successful in their Application, I grant reimbursement of the \$100 Application filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$6,600.33 for damage and other monetary loss, and a recovery of the filing fee for this hearing application. The Landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: February 18, 2022

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Residential Tenancy Branch