



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The landlord testified that the tenant was served with a copy of this application for dispute resolution and the majority of her evidence via registered mail on August 29, 2021. The tenant confirmed receipt of the above documents around that time. I find that the above documents were served on the tenant in accordance with sections 88 and 89 of the *Act*.

Both parties agree that the landlord served the tenant with additional evidence via registered mail on January 25, 2022. The tenant testified that this evidence was received on January 25 or 26, 2022. I find that this evidence was served in accordance with section 88 of the *Act*.

Both parties agree that the landlord emailed the tenant at the end of August 2021 with a link to a drop box account that contained videos of the microwave, shower rod and shelving. Both parties agree that the landlord asked the tenant if he could access the videos. Both parties agree that the tenant confirmed his ability to access the videos. The tenant testified that while he could access the videos, he did not view them.

I find that the tenant was sufficiently served, for the purposes of this *Act*, with the landlord's videos, pursuant to section 71 of the *Act* because the tenant confirmed his ability to access the videos provided by the landlord. The tenant elected not to view the videos after making the landlord believe that there were no issues with the tenant's ability to access the evidence. I find that the tenant was deemed served with the landlord's evidence in accordance with section 88 and 90 of the *Act*. I note that most of the footage seen in the videos is also seen in the photographs entered into evidence by the landlord which the tenant confirmed receipt of.

#### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and ended on July 31, 2021. Monthly rent in the amount of \$1,695.00 was payable on the first day of each month. A security deposit of \$847.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties testified that they agreed to meet on December 22, 2019 to complete the move in condition inspection report, but the tenant forgot and missed the appointment.

The landlord testified that she could not meet to complete the move in condition inspection the following day but asked the outgoing tenant to complete the move in condition inspection report, as an agent of the landlord, with the tenant on December 23, 2018. Both parties agree that the outgoing tenant and the tenant completed the move out condition inspection report on December 23, 2018. The move in condition inspection report was entered into evidence. The tenant testified that the outgoing tenant did not move out until December 31, 2018 and that he was not comfortable completing the move in condition inspection report prior to the outgoing tenant moving out.

The tenant testified that at the time the move in condition inspection report was completed, he agreed to the contents of the report but testified that it was not as detailed as he would have liked; however, he did not voice his preferences to the outgoing tenant at that time.

Both parties agree that the landlord and the tenant completed a joint move out condition inspection report on July 31, 2021. The move out condition inspection report was entered into evidence and states at section Z of the move out condition inspection report:

Damage to rental unit or residential property for which the tenant is responsible:

Broken microwave door and handle, broken top shelf of bedroom closet, cracked electrical outlet in bathroom, missing stoppers, uninstalled curtain rod, uninstalled living room light, patio floor uncleaned.

Section Z1 of the move out condition inspection report states that the tenant does not agree that this report fairly represents the condition of the rental unit for the following reasons:

Am willing to clean the bird poop. Don't have a ladder tall enough to change the living room light. Outlet in washroom was already cracked. Microwave is 16 years old and was already cracked and after one year the handle fell off. Provided the stoppers to the landlord. Am willing to install the shower curtain rod.

The move out condition inspection report states the tenant's forwarding address.

The landlord testified that the following damages arose from this tenancy:

<b>Item</b>	<b>Amount</b>
Replace microwave door	\$321.09
Repair closet drywall and reinstall shelving	\$235.00
Clean balcony	\$185.00
Replace shower flanges	\$18.50
<b>Total</b>	<b>\$759.59</b>

#### Replace microwave door

The landlord testified that the microwave door was in good working order at the start of this tenancy and that at the end of this tenancy the handle fell off, the door was cracked, and the corner of the door was ripped off. Photographs of same were entered into evidence. The landlord testified that it cost \$321.09 to replace the microwave door. The landlord entered into evidence a screen shot of an online order for same. The landlord testified that the subject rental property was built in 2007 and the microwave is original to the unit.

The tenant testified that the corner of the microwave door was glued on at the start of this tenancy and that the handle fell off from regular wear and tear. The tenant testified that the useful life of a microwave, according to Residential Tenancy Branch Policy Guideline #40 (PG #40) is 10 years. The tenant testified that the microwave was manufactured in 2005 and that the microwave is 16 years old and past its useful life. The tenant entered into evidence a photograph of the inside of the microwave which states that it was manufactured in 2005. The landlord testified that while it was manufactured in 2005, it was not installed until 2007 and was new at that time.

#### Repair closet drywall and reinstall shelving

Both parties agree that at the start of this tenancy the bedroom closet had two rows of rack shelving. The landlord testified that at the start of this tenancy the shelves were properly affixed to the wall and the drywall was undamaged. The landlord testified that

during the tenancy, and without her permission, the tenant removed the shelving. The landlord testified that when the shelves were removed the tenant ripped the anchors out of the wall, which caused damaged to the walls.

The landlord testified that at the end of the tenancy she asked the tenant to re-install the racks and that while he did so, he did not install new anchors and the shelves were therefore not properly secured to the walls. The landlord testified that the screws were just pushed into the holes from the anchors which did not provide any support. The landlord testified that it cost \$235.00 to fix the walls and re-install the racks. A quote for same was entered into evidence. The landlord testified that the repairs were made and the repair and reinstallation cost \$235.00. The landlord testified that the shelving was installed when the property was built in 2007.

The tenant testified that he only removed the bottom row of shelves, not the top row. The tenant testified that the top shelves are the shelves that the landlord is complaining of being loose. The tenant testified that the shelving has become loose from normal wear and tear since the property was built.

Both parties agree that on July 28, 2021 the landlord attended at the subject rental property and subsequently emailed the tenant a list of items to be fixed or repaired. The landlord testified that on July 28, 2021 she saw that the lower rack was not installed but that the upper closet shelving was installed.

The tenant testified that when he removed the lower shelving rack, he did not pull anchors from the wall but unclicked the shelving from the anchors. The tenant testified that he only had to remove one lower support screw from the wall. The landlord entered into evidence a video of a support arm on the lower rack which is not property secured, the screw appears to be pushed into the wall rather than screwed in and does not provide support. The hole is larger that the screw. The landlord entered into evidence a video of the upper shelving rack in which the support anchors can be seen to be pulled from the wall.

The tenant testified that he noticed that the upper shelf had some structural issues during his tenancy and installed additional support brackets. The tenant's additional brackets can be seen in photographs entered into evidence. The tenant testified that he used the upper shelving rack for his clothes during this tenancy.

The landlord testified that the top shelf anchors were pulled out of the wall which shows her that the shelf was removed by the tenant.

The move in condition inspection report states that the closet in the mater bedroom is in good condition and the move out condition inspection report states that the "top shelf came out of anchors".

#### Clean balcony

Both parties agree that the balcony was dirty at the end of this tenancy. The tenant testified that at the move out condition inspection he offered to clean the balcony as he forgot to prior to the move out condition inspection, but the landlord did not agree. The landlord testified that the tenant had until 1:00p.m. on July 31, 2021 to clean the property and did not do so.

The landlord testified that she had the balcony cleaned and that this cost \$185.00. A quote for same was provided into evidence. The landlord testified that she paid the amount of the quote to the cleaning company.

#### Replace shower flanges

Both parties agree that the tenant removed the tension shower curtain rod from the bathroom of the subject rental property and replaced it with his own. Both parties agree that at the end of the tenancy the tenant took his curtain rod with him and left the landlord's curtain rod at the subject rental property.

The tenant testified that during the tenancy, the landlord picked up a box containing a number of items from the subject rental property that the tenant did not want. The tenant testified that the box contained the curtain rod flanges, or stoppers that go on the ends of the rod. The landlord testified that the box did not contain the flanges. The landlord testified that at the end of the tenancy she had to purchase new flanges which cost \$18.50. An online screen shot of same was entered into evidence. The landlord testified that the flanges were original to the subject rental property built in 2007.

## Analysis

Section 67 of the Act states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

PG #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, 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.

Section 23(1) of the *Act* states:

**23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

The definition of landlord under section 1 of the *Act* includes an agent of the landlord. I find that while it is unusual for a previous tenant to *Act* as a landlord's agent, the *Act* does not prohibit it. I find that while it is unusual to perform a move in condition inspection before the current tenant has moved out, section 23(1) of the *Act* states that the parties can agree to complete the move in condition inspection on any mutually agreed day, which includes days before the tenancy starts. I note that the tenant did not testify that the condition of the rental unit on the date the move in condition inspection took place changed between that date and the date of move in. I therefore find that the condition of the subject rental property did not change between December 23, 2018 and January 1, 2019.

Section 21 of the Residential Tenancy Act Regulation states:

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.

I find that neither party has provided a preponderance of evidence to contradict the move in condition inspection report. I therefore accept that the condition noted in the move in condition inspection report was the condition on move in.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.



Replace microwave door

PG #40 states that the useful life for a microwave is 10 years. Based on the testimony of both parties, I find that the microwave was newly installed in 2007 and was therefore roughly 14 years old at the end of this tenancy. I therefore find that the microwave's useful life was expired, and the landlord is not entitled to recover the cost of a new microwave door.

Repair closet shelving

Based on the move in condition inspection report, and pursuant to section 21 of the *Regulation*, I find that the drywall behind the shelving in the bedroom closet was in good condition at the start of this tenancy and the shelving was securely installed. Based on the testimony of both parties and the video and photographic evidence entered into evidence by the parties, I find that the drywall behind the shelving was damaged at the end of this tenancy and the shelving was not securely installed.

I find that the deterioration, the anchors being pulled away from the wall, was not solely caused by regular wear and tear and that the tenant caused additional damaged to the drywall behind the shelving, contrary to section 37(2)(a) of the *Act*. I also find that drywall does not have an indefinite lifespan and that the use of the shelving over the course of 14 years likely contributed to the deterioration of the drywall where the shelving unit was screwed into it.

PG #40 states that the useful life of drywall is 20 years. I find that at the time the tenant moved out, there should have been 6 years of useful life of the drywall remaining. I find that since the drywall required repair after only 14 years, the tenant is required to pay according to the following calculations:

$$\text{\$235.00 (cost of repair) / 240 months (useful life of drywall) = \$0.98 (monthly cost)}$$

$$\text{\$0.98 (monthly cost) * 72 months (expected useful life of drywall after tenant moved out) = \$70.56}$$

### Clean balcony

Based on the testimony of both parties, I find that the tenant did not clean the balcony, contrary to section 37(2)(a) of the *Act*. I find that at the time of the move out condition inspection, the property was required to be clean, and the landlord was under no obligation to allow the tenant more time to clean the subject rental property. I find that the landlord is entitled to the cost of the balcony cleaning in the amount of \$185.00 as evidenced by the estimate entered into evidence.

### Replace shower flanges

Based on the testimony of both parties, I find that the curtain rod was equipped with shower flanges (stoppers) at the start of this tenancy and did not have shower flanges at the end of this tenancy.

The tenant testified that he returned the shower flanges to the landlord during the tenancy, the landlord testified that they were not returned. I find, on a balance of probabilities, that the flanges were not returned to the landlord as if they tenant had provided them to the landlord with other items not in use, the tenant would likely also have provided the curtain rod to the landlord for collection. I find that it makes little sense to separate the curtain rod from the flanges.

PG #40 does not provide a useful life for shower flanges, so I am not able to complete a useful life calculation.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I award the landlord \$10.00 in nominal damages for the tenant's loss of the shower flanges.

### Filing fee

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Security Deposit

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of both parties, I find that the tenant provided the landlord with his forwarding address in writing, in accordance with section 38 of the *Act*, on July 31, 2021. The landlord filed this application seeking authorization to retain the tenant's security deposit on August 11, 2021, which is within 15 days of receipt of the tenant's forwarding address, as required by the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain **\$365.56** from the tenant's security deposit. I Order the landlord to return the remaining **\$481.94** to the tenant.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Security deposit	\$847.50
Less repair to closet shelving	-\$70.56
Less balcony cleaning	-\$185.00
Less nominal damage for flanges	-\$10.00
Less filing fee	\$100.00
<b>TOTAL</b>	<b>\$481.94</b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 25, 2022

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Residential Tenancy Branch