



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,622.04 for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires. The spouse of the landlord, PP (spouse) attended the first hearing dated but not the second hearing date.

The hearing commenced on October 28, 2021, and after 52 minutes, the hearing was adjourned to allow additional time to consider testimony and documentary evidence from the parties. An Interim Decision dated October 28, 2021, was issued, which should be read in conjunction with this Decision. On March 10, 2022, the hearing continued and after an additional 37 minutes, the hearing concluded.

The tenant confirmed being served with the landlord's documentary evidence and confirmed that they had the opportunity to review that evidence prior to the hearing. The landlord testified that they were not served with any documentary evidence by the tenant. The tenant confirmed they did not serve the landlord and pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 3.15, the tenant's documentary evidence was excluded in full as it was not served on the landlord.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on July 1, 2018 and reverted to a month-to-month tenancy after June 30, 2019. Monthly rent was \$2,500.00 per month and was due on the first day of each month. As the deposits have already been dealt with in a previous decision, they will not be described further in this decision.

The landlord's monetary claim for \$2,622.04 I find contains a mathematical error and should read as \$2,573.14 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair burner (stove)	\$110.25
2. Stove top replacement	\$344.47
3. Stove control knob replacement	\$326.63
4. Cleaning costs	A. \$241.50 B. \$262.50
5. Repair drywall damage	\$563.80

6. Replace damaged kitchen faucet	\$223.99
7. Labour for kitchen faucet	\$100.00
8. New tenant time cleaning, 7 hours at \$25.00 per hour	\$175.00
9. Landlord labour, 5 hours at \$25.00 per hour	\$125.00
10. Filing fee	\$100.00
TOTAL	\$2,573.14

The parties confirmed that the landlord did not complete an incoming or outgoing Condition Inspection Report in writing as required by the Act, which I will address later in this decision.

I will address items 1, 2 and 3 together as they all relate to the gas stove in the kitchen. The landlord is claiming \$110.25 to repair a burner, \$344.47 to replace the stove top, and \$326.63 to replace control knobs. The landlord referred to an invoice dated November 24, 2020 (Stove Invoice) in the amount of \$110.25, which reads as follows, which has been redacted to protect privacy:

Address:		Postal Code:		Problem: <i>check Reconnect burner</i>	
City/Prov.:		Date Call Started: <i>M 24 20</i>		Date Call Completed: <i>M 24 20</i>	
Other:		Estimate:		Authorized By: <i>[Redacted]</i> P.O. #:	
QTY.	PART NO.	DESCRIPTION	UNIT PRICE	AMOUNT	
1	W10128507	Control Console <i>knobs</i>	\$326.63		
1	W10885066	Cook Top: <i>OK Del</i>	\$344.47		
<i>pd MIC</i>			<i>Paid in Full by</i> <i>Mastercard</i> <i>Authorization No. [Redacted]</i> <i>THANK YOU</i>		
SERVICE PERFORMED:					
<i>Connected burner Cap Size = tested = OK</i>					
<i>Found w/maker stop arm out of</i>					
<i>Switch = Reinstalled arm = removed w = OK</i>					
MINUTES	DATE	MINUTES	DATE	TOTAL MINUTES	
		45	24	45	
WARRANTY				30 Days	
PAID BY:				LABOUR:	
CASH				LABOUR	
CHEQUE				LABOUR	
VISA				LABOUR	
MASTERCARD				LABOUR	
TOTAL				110.25	

The landlord testified that the home was new in June 2018 and that the tenant was the first tenant to occupy the home. The landlord stated that the tenant was negligent by ruining the ceramic coating of the front left burner on the gas cooktop. The landlord

provided one photo in evidence of the cooktop/stove, which shows a heavily used front left burner that has worn away the surface of the gas cooktop underneath the burner.

The landlord also referred to the same Stove Invoice, which lists a “Control Console Special Order” of \$326.63 and Cooktop of \$344.47. It does not indicate that either the control console or cooktop were paid for or ordered. The problem description portion does say “check rear upper burner” and “Fridge – icemaker” and “est on gas range”.

The tenant responded to items 1, 2 and 3 by stating that they used the stove daily for over 2 years and that the stove had normal wear and tear only. The tenant stated that 1 burner would not light, which was a stove defect and not a tenant negligence issue.

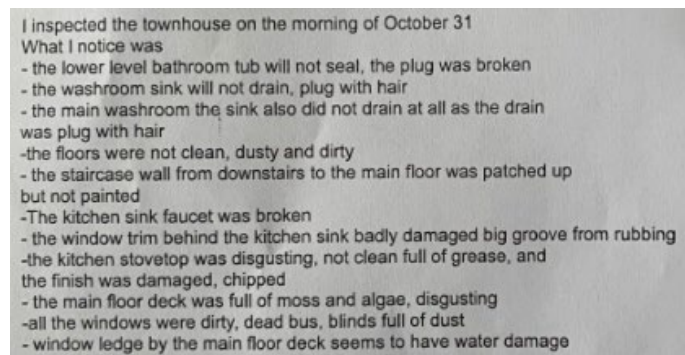
Regarding item 4, the landlord has claimed for two cleaning invoices, the first being \$241.50 and the second being \$262.50. Both invoices were from a cleaning company and are dated November 13, 2020, and November 3, 2020, respectively. Both cleaning invoices are marked as “Paid” and they include the following relevant information:

November 3, 2020 Move out clean 5 hours at \$50.00 per hour plus tax: \$262.50

November 11, 2020 Move out clean 5 hours at \$46.00 per hour plus tax: \$241.50

Neither cleaning invoice lists the specific items cleaned. The landlord presented several photos, one showing a sink with a significant amount of hair attached to the removed drainplug. Another photo shows the interior window track that does not appear to have been cleaned. Another photo shows another drain and is too blurry to be afforded any weight.

The tenant referred to an email submitted in evidence from her husband based on his visual inspection of the rental unit after the tenant vacated:



I inspected the townhouse on the morning of October 31
What I notice was

- the lower level bathroom tub will not seal, the plug was broken
- the washroom sink will not drain, plug with hair
- the main washroom the sink also did not drain at all as the drain was plug with hair
- the floors were not clean, dusty and dirty
- the staircase wall from downstairs to the main floor was patched up but not painted
- The kitchen sink faucet was broken
- the window trim behind the kitchen sink badly damaged big groove from rubbing
- the kitchen stovetop was disgusting, not clean full of grease, and the finish was damaged, chipped
- the main floor deck was full of moss and algae, disgusting
- all the windows were dirty, dead bus, blinds full of dust
- window ledge by the main floor deck seems to have water damage

We told the Tennant that the unit needs to be clean properly and repairs performed to the damages as the new Tennant is taking possession the next day. He mentioned that he was too busy as he is running a restaurant, we offer to make some arrangements and told him we will get estimates for the cleaning and repair. He was very grateful we were doing all the leg work as he had no time.

The tenant responded to this item by stating that they left the house clean, but it may not have been up to the landlord's standard of clean. The tenant reiterated that they left the rental unit in good shape.

Regarding item 5, the landlord has claimed \$563.80 for drywall repairs. The landlord testified that the tenant damaged the walls while moving in. Three photos were submitted in evidence which showed damage to the drywall and that two of the photos, the damage had been filled and had yet to be repainted. The interior paint was 2.5 years old by the end of the tenancy. The landlord submitted an invoice from the company that built the home originally in the amount of \$563.80 to repair the damaged drywall.

The tenant responded to this portion of the landlord's claim by admitting that their mattress did scratch the walls when it was brought into the home. The tenant was under the assumption that the company would just come back to repaint it.

Regarding item 6, the landlord has claimed \$223.99 for the cost to replace a damaged kitchen faucet. In the photo provided by the landlord, there is clear scrape behind the kitchen faucet on the window trim, which I will address in my analysis below. The photo also shows the faucet handle broken off the faucet and the handle in the hands of the person shown in the photo. The landlord provided a receipt from Costco in the amount of \$223.99 for the cost of a new kitchen faucet. The landlord stated that a friend installed the new faucet.

The tenant testified that the faucet was cheap and broke from normal use and was not of good quality.

For items 7, 8 and 9, the landlord is claiming labour for installing the kitchen faucet of \$100.00, the time the new tenant spent cleaning, at 7 hours at \$25.00 per hour for a total of \$175.00, plus another 5 hours of the landlord's time at \$25.00 per hour for a total of \$125.00. The landlord is relying on the evidence described above for these portions of their claim. The tenant stated that they were a family of four that lived in the rental unit for over 2 years and that it is no longer a new house after 2 years. The landlord stated that they feel it is not right to have the house in the condition shown in the photos

after 2 years, which I will address in my analysis below. The tenant stated the stove was working and that wall scratches were a maintenance issue.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the lack of an incoming and outgoing Condition Inspection Report (CIR). Section 23 and 35 of the Act apply and state:

Condition inspection: start of tenancy or new pet

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.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).

- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Condition inspection: end of tenancy

- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

I find the landlord breached sections 23 and 35 of the Act by failing to complete the CIR as required by the Act. Given the above, I **caution** the landlord to comply with sections 23 and 35 of the Act in the future.

I will now address each item of the landlord's claim:

Items 1, 2 and 3: I am going to combine these items as they all relate to the stove in the kitchen. The landlord is claiming \$110.25 to repair a burner, \$344.47 to replace the stove top, and \$326.63 to replace control knobs.

I accept that the home was new in 2018 and that the tenant was the first tenant in the new home. I have carefully reviewed the photo evidence and I agree with the landlord that the tenant was negligent by ruining the ceramic coating of the front left burner on the gas cooktop. I do not agree with the tenant that the damage to the left front burner of the gas cooktop was due to normal wear and tear. I find the tenant either damaged the surface with something very abrasive or from a lack of reasonable cleaning during the tenancy.

RTB Policy Guideline 40 – Useful Life of Building Elements (Guideline 40) states the useful life of a stove is 15 years, which is 180 months. I find the stove was used for a total of 27 months between July 1, 2018, and October 31, 2020, and that the stove depreciated in value by 15%. Therefore, I will deduct 15% from any portion the landlord is successful for items 1, 2 and 3.

For item 1, the invoice is in the amount of \$110.25 to fix one burner of the gas stove. I find the tenant's testimony was contradictory as the first portion of the hearing, the tenant confirmed one burner was not working at the end of the tenancy, and in the second portion of the hearing, the tenant stated the stove was working properly. Therefore, I prefer the evidence of the landlord and I grant the landlord this portion of their claim, less 15% for depreciation. I find the tenant is liable for the non-working burner as I find it more likely than not, that the tenant damaged the burner. Therefore, I grant the landlord **\$93.71**, which includes the 15% amount depreciated from \$110.25.

For item 2, and consistent with my finding above, I award the landlord the following amount for what I find to be negligent use of the gas stovetop which damaged the coating of the gas cooktop, which I find is supported by the photo evidence. Therefore, I grant the landlord **\$292.80**, which includes 15% depreciation on the full amount of \$344.47.

For item 3, I am not satisfied that the landlord has met the burden of proof to support that the tenant damaged the control knobs as I find the photo evidence does not support this portion of the claim. Therefore, this item is dismissed due to insufficient evidence, without leave to reapply.

Item 4 - The landlord has claimed \$504.00 for two cleaning invoices, the first being \$241.50 and the second being \$262.50. Section 37(2)(a) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(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,

[emphasis added]

Although the tenant testified that the cleaning performed may have not been to the cleanliness standard of the landlord, I find the photo evidence supports that the tenant failed to leave the rental unit in a reasonably clean condition. Firstly, I find the window photo supports that the interior of the window tracks were not cleaned at the end of the tenancy, which is the responsibility of the tenant pursuant to RTB Policy Guideline 1. Further, I find the sink drain had an unreasonable amount of hair clogging the drainplug, especially for a tenancy of 27 months. The second photo was of no weight however, as the photo was too blurry. I afford some weight to the description by the landlord's husband in the email provided as the tenant did not dispute the contents of that email during the hearing. Given the above, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit to a reasonable standard. **I caution** the tenant not to breach section 37(2)(c) of the Act in the future.

I will only grant ½ of the extra cleaning costs as claimed as I am only satisfied that 50% of the amount charged for cleaning was required to bring the rental unit back to reasonable standard. I find that any additional cleaning would be to a standard that exceeds reasonably clean based on the photo evidence before me and the fact that no condition inspections were completed in accordance with the Act. Accordingly, I grant the landlord ½ of \$504.00, which is **\$252.00**. I dismiss any amount higher than \$252.00 due to insufficient evidence, without leave to reapply.

Item 5 - The landlord has claimed \$563.80 for drywall repairs. Firstly, I find this portion relates to filling of scratches and repainting versus replacing sheets of drywall.

Therefore, I find that Guideline 40 sets the useful life of interior paint at 4 years, or 48 months. I find the tenant admitted to damaging the walls with their mattress when the tenant moved into the rental property. Secondly, I do not agree with the tenant that repairing the scratches they caused is "maintenance". Therefore, I find the tenant is responsible for the costs to repair the damaged drywall; however, as the interior paint was 27 months old, I will apply 56% depreciation to the \$563.80 amount claimed as 27

of 48 months equals 56%. I award the landlord **\$248.07** as a result, which includes depreciation of 56%. I dismiss any amount over that amount, due to insufficient evidence, without leave to reapply.

Item 6 - The landlord has claimed \$223.99 for the cost to replace a damaged kitchen faucet. I have carefully reviewed the photo provided by the landlord, and I find the scrape in the window trim supports that the faucet was not installed correctly when new. Had the faucet been installed correctly, the faucet handle would not touch the window trim, which I find was more likely than not what caused the faucet to break. Therefore, I find the tenant is not liable for the damage to the faucet and dismiss this portion of the landlord's claim in full, due to insufficient evidence, without leave to reapply.

Items 7, 8 and 9 – I do not grant any of these items to the landlord as I have already dismissed item 6 above, related to the faucet and I have already granted what I find the landlord is entitled to for cleaning costs. I find the landlord has not provided sufficient evidence to support items 7, 8 and 9 as a result, and I dismiss them in full, without leave to reapply due to insufficient evidence.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act. Based on the above, I find the landlord has established a total monetary claim of **\$986.58**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Repair burner (stove)	\$93.71
2. Stove top replacement	\$292.80
3. Stove control knob replacement	dismissed
4. Cleaning costs	\$252.00
5. Repair drywall damage	\$248.07
6. Replace damaged kitchen faucet	dismissed
7. Labour for kitchen faucet	dismissed
8. New tenant time cleaning, 7 hours at \$25.00 per hour	dismissed
9. Landlord labour, 5 hours at \$25.00 per hour	dismissed
10. Filing fee	\$100.00
TOTAL	\$986.58

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$986.58**.

Conclusion

The landlord's claim was partially successful.

The landlord has established a total monetary claim of \$986.58 and has been granted a monetary order in that amount. Should the landlord require enforcement of the monetary order, the monetary order must first be served on the tenant by the landlord and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant may be held liable for the costs associated with enforcing the monetary order.

The landlord and tenant have both been cautioned as noted above.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 28, 2022

Residential Tenancy Branch