



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDL, FFL

### **Introduction**

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord and tenant L.J. (the "tenant") 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.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

The landlord testified that she emailed the tenant with a copy of this application for dispute resolution and the landlord's evidence on November 6, 2021. The landlord applied for dispute resolution on November 28, 2021 and the dispute resolution materials were made available to the landlord on December 2, 2021.

The tenant testified that she received the above materials via email on December 5, 2021. I find, on a balance of probabilities, that the landlord is mistaken on the date the

serving email was sent as the dispute materials were not available for service on November 6, 2021. Nonetheless, I find that the tenant was sufficiently served for the purposes of this *Act*, with the landlord's application for dispute resolution and evidence on December 5, 2021, pursuant to section 71 of the *Act*, because receipt was confirmed.

The tenant testified that she did not submit any evidence for consideration.

### **Issues to be Decided**

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, 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 May 1, 2018 and ended on November 30, 2019. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants to the landlord.

Both parties agree that a joint move in condition inspection report was completed by the landlord and the tenant on May 1, 2018. The move in condition inspection report was entered into evidence and is signed by the landlord and the tenant. The move in condition inspection report states that the tenant agrees with the contents of the report.

The tenant testified that when she first moved into the subject rental property she had no where else to go and so just agreed with everything on the move in condition inspection report.

The landlord testified that both parties are adults and freely entered into the tenancy agreement and that the tenant was not forced to sign the move in and out condition inspection reports.

Both parties agree that a joint move out condition inspection report was completed by the tenant and an agent of the landlord on November 30, 2019. The move out condition inspection report was entered into evidence and is signed by the landlord's agent and the tenant. The move out condition inspection report states that the tenant agrees with the contents of the report. On the move out condition inspection report the tenant agreed in writing to allow the landlord to retain the security deposit for ½ month's unpaid rent for November 2019.

The landlord is claiming the following damages stemming from the tenancy:

<b>Item</b>	<b>Amount</b>
Repair fridge	\$317.31
Replace vertical blinds	\$385.10
Repair broken door casings (materials)	\$185.11
Labour for replacing broken door casings	\$280.00
Replace broken and missing horizontal blinds (materials)	\$271.54
Labour for replacing horizontal blinds	\$175.00
Labour to repair wall scratches	\$245.00
Replace missing towel hanger and dimmer knob (materials)	\$32.10
Labour for replacing towel hanger and dimmer knob	\$35.00
Labour to repair shelf and kitchen counter	\$35.00
Labour to clean oven and fridge	\$70.00
Labour to clean bathroom	\$35.00
<b>TOTAL</b>	<b>\$2,066.16</b>

#### Repair fridge

The landlord testified that the tenant broke two door shelf retainer bars, one support rail and a meat pan crisper in the fridge. The landlord testified that she purchased the fridge new in 2011 and that the above items were in good condition at the start of the tenancy and were broken at the end of the tenancy. The landlord testified that a drawer in the

fridge was cracked at the start of this tenancy, and she is not seeking compensation for the drawer.

The move in condition inspection report states that the fridge is in good condition except for 1 crack in the “crisper/shelves”. The move out condition inspection report states that there are two broken shelves and one broken crisper. The landlord entered into evidence photographs of broken fridge pieces.

The landlord entered into evidence the following screenshots of advertisements for:

- Meat pan crisper: \$175.79,
- Crisper support rail: \$47.96,
- Door shelf retainer bar: \$42.87, and
- Door shelf retainer bar: \$50.69.

The landlord testified that she looked up the cost of repairing the fridge by searching the serial number for the fridge. The landlord testified that she has not purchased the above items yet because she does not have the money to.

The landlord testified that she has not rented out the subject rental property, which is located in the basement of the home the landlord resides in, since the tenant moved out because she cannot afford to fix it.

The tenant testified that the fridge pieces were already breaking when she moved in. The tenant testified that the bottom drawer was already cracked when she moved in and that she told the landlord about other fridge parts breaking but the landlord never had money to fix anything.

The landlord testified that the tenant was never forced to sign the condition inspection report and did so freely. The landlord testified that during the tenancy the tenant told her she broke two of the claimed items and that the tenant has to pay for them.

#### Replace vertical blinds

The landlord testified that when the tenant moved out the valence on the vertical blinds came off and the blinds could not turn to let light in and it was very difficult to close them. The landlord testified that the vertical blinds in the living room were in good condition at the start of the tenancy.

The move in condition inspection report states that the living room window coverings are in good condition. The move out condition inspection report states that the window coverings will not open.

The landlord entered into evidence an online advertisement for new vertical blinds in the amount of \$385.10. The landlord testified that she has not replaced the blinds because she cannot afford to. The landlord is seeking \$385.10 from the tenant. The landlord testified that she purchased the subject rental property in 2011 and the blinds came with the house. The landlord testified that she did not know how old they were but that the previous landlord completed a renovation at some point in time before she purchased the property, but she did not know when.

The tenant testified that she and the other tenant, her husband, didn't open the blinds often during the tenancy and that they were always difficult to open.

#### Repair broken door casings

The landlord testified that the door casings in the subject rental property were in good condition at the start of this tenancy and that portions of four-bedroom door casings and one bathroom door casings were scratched/chewed at the end of this tenancy. Photographs of damaged door casings were entered into evidence.

The move in condition inspection report states that the trim throughout the subject rental property is all in good condition. The move out condition inspection report states that all door trim are damaged. The landlord entered into evidence receipts for trim/casing materials totalling \$185.11.

The landlord testified that she and her son installed the trim themselves, but that she is only seeking compensation for the time she spent installing the trim, not the time her son helped her. The landlord testified that she spent eight hours repairing the damaged trim around the doors. The landlord testified that even though the trim she purchased did not match the existing trim perfectly, she only replaced the damaged trim. The landlord testified that she is seeking \$35.00 per hour for her labour. (8hrs \* \$35.00/hr = \$280.00)

The tenant testified that her cat damaged the trim but that it was not brand new on move in. The landlord testified that the house was renovated when she bought it in 2011.

The tenant testified that the hourly rate sought by the landlord was high and that the landlord could have exaggerated the time spent on labour to get more money. The landlord testified that she is requesting a substantially lower rate than a handyman because she is not as skilled and fast as a handyman. The landlord testified that handmen can charge \$80.00 per hour and she is seeking much less on account of the added time it takes her to complete the repairs.

#### Replace broken and missing horizontal blinds

The landlord testified that the horizontal aluminum blinds were in good condition at the start of this tenancy and that the kitchen blinds were missing at the end of this tenancy and four other sets of blinds were damaged requiring replacement. The landlord's excel spreadsheet which set out all the landlord's labour claims, states that the blinds in the 3 bedrooms, entrance den, kitchen and living room all required replacement.

The move in condition inspection report states that all the window coverings are in good condition. The move out condition inspection report states the following condition of the window coverings in the following rooms:

- Entry- left blank
- Kitchen- not on window
- Living room- will not open
- Main bathroom- good
- Master bedroom- damaged blinds (8)
- Bedroom 2- 8 blinds damaged
- Bedroom 3- 4 blinds damaged

The landlord entered into evidence a receipt for new aluminum blinds totalling \$271.54. The landlord is seeking this amount from the tenants. The landlord testified that it took her 7 hours to install all the blinds and that she is seeking \$35.00 per hour for this work for a total of \$175.00 in labour.

The landlord testified that the blinds looked new when she moved in and that the previous owner replaced all the blinds maybe a few years before the property was sold to the landlord.

The tenant testified that the blinds were not broken and were perfectly fine. The tenant testified that no bends in the blinds were ridiculously noticeable. The landlord entered into evidence photographs of the horizontal blinds showing bends in the horizontal slats.

### Labour to repair wall scratches

The landlord testified that the walls were in good condition at the start of this tenancy and many areas required filling and painting at the end of this tenancy. The landlord testified that the entrance bedroom was the worst and required a patch the size of three basketballs that needed to be mudded, sanded and painted. The landlord testified that other areas required mudding, sanding and painting. Photographs of same were entered into evidence. The landlord testified that it took her more than 7 hours to repair the damage but is only seeking compensation for 7 hours at \$35.00 per hour for a total of \$245.00. The landlord testified that she is not seeking compensation for painting supplies which she already had.

The move in condition inspection report states that all the walls in subject rental property are in good condition except the entry which was left blank. The move out condition inspection report states the following condition of the walls in the following rooms:

- Entry- left blank
- Kitchen- good
- Living room- good
- Hall- good
- Main bathroom- towel hanger missing
- Master bedroom- damaged, ledge paint peeled
- Bedroom 2- wall damaged
- Bedroom 3- good

The tenant testified that she agrees that her daughter's bedroom needed to be painted because she picked at the paint causing the basketball sized damage described by the landlord. The tenant testified that the landlord did not need to paint elsewhere and is trying to get her entire house painted.

The landlord testified that she only repaired the damage and did not paint entire rooms. The tenant testified that it should not have taken 7 hours to repair the damage.

### Replace missing towel hanger and dimmer knob

Both parties agree that at the start of the tenancy the towel hanger and dimmer knob were in good working order and were missing at the end of the tenancy. The landlord did not know how old the above items were but testified again that she bought the

subject rental property in 2011 and it was recently renovated at that time. The landlord entered into evidence a receipt for the above totaling \$32.10.

The tenant testified that she is responsible for the above.

The landlord testified that it took her one hour to install the above items and is seeking \$35.00 for that labour.

#### Labour to repair shelf and kitchen counter

The landlord testified that the microwave shelf and the kitchen counter were in good condition at the start of this tenancy and were damaged at the end of this tenancy. The landlord testified that a piece of laminate came off the shelf and the counter. The landlord testified that she coloured the exposed wood to make it look better and that this took her one hour and that she is seeking \$35.00 for this repair.

The tenant testified that the countertop was already broken on move in but she damaged the shelf.

The move in condition inspection report states that there is a burnt spot on the countertop, it does not mention damaged laminate. The move out condition inspection report states that there is one ripped strip on the countertop.

#### Cleaning

The landlord testified that the tenant did not clean the oven, fridge and bathroom and that it took her three hours to clean these items. The landlord is seeking 3 hours compensation at a rate of \$35.00 per hour for a total of \$105.00.

The move in condition inspection report states that the oven is in good condition, the refrigerator components, excluding one crack, are in good condition and the bathroom is in good condition. The move out condition inspection report states that the oven is not clean, the refrigerator is dirty, and that the main bathroom is in good condition except for a missing knob and towel hanger.

The tenant testified that she did not clean the oven and the bathroom. The tenant testified that she cleaned the fridge, but maybe not to the landlord's standard. The tenant testified that she spent three hours cleaning the house.



## **Analysis**

### **Duress**

Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner. *Lei v. Crawford*, 2011 ONSC 349 (CanLII), (approved *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183)

In this case I am unable to find the essential elements necessary to form the defence of duress regarding the signing of the move in condition inspection report. It may be that to the tenants the landlord had the superior bargaining position, but the tenants were free to state on the move in condition inspection report that they did not agree with the contents of that report, if indeed they did not agree with the contents of that report. I find that the tenant willingly and freely signed the move in condition inspection report.

### **Condition Inspection Reports**

Section 37 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.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

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.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

### Useful life of building elements

Residential Tenancy Guide #40 (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.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord. I find that when items are repaired, a useful life calculation is not required because the repair will not likely increase the useful life of the repaired item, but will return it to its pre-damaged state.

### Damages

Section 67 of the *Act* states:

**67** 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 tenant 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 tenant's claim fails.

#### Repair fridge

Based on the move in and out condition inspection reports, I find that the tenants broke two door shelves and the meat pan crisper and supporting rail, contrary to section 37 of the *Act*. I find that the tenants' have not provided a preponderance of evidence to refute the move in and out condition inspection reports.

I accept the landlord's testimony that the fridge was new in 2011. I find that at the time the tenant moved out, the fridge was approximately eight years old. PG #40 states that the useful life of a refrigerator is 15 years. I find that at the end of this tenancy the refrigerator has approximately 7 years of useful life left. I find that the landlord has proved that they suffered a loss from the tenant's breach of section 37 of the *Act* totalling \$317.31 as set out in the advertisements entered into evidence. I find that no mitigation issues are present.

I award the landlord \$317.31 to repair the fridge.

#### Replace vertical blinds

Based on the move in and out condition inspection reports, I find that the tenants damaged the vertical blinds in the living room, contrary to section 37 of the *Act*. I find that the tenants' have not provided a preponderance of evidence to refute the move in and out condition inspection reports. PG #40 states that blinds have a useful life of 10 years. I find that at the end of this tenancy the blinds were at least 8 years old but possibly longer as the landlord did not know when they were installed. I find that I am

not able to complete a useful life calculation on the vertical blinds because the landlord has not provided conclusive evidence of their age. The landlord has therefore not proved the quantum of the loss suffered.

Residential Tenancy Policy Guideline 16 (PG #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 find that the landlord has proved that the vertical blinds were damaged contrary to section 37 of the *Act* but has not proved the loss suffered. Pursuant to PG #16 I award the landlord \$25.00 in nominal damages.

#### Replace broken door casings

Based on the testimony of both parties and the move in and out condition inspection reports, I find that the tenants' pet(s) damaged some of the door casing/trim in the subject rental property, contrary to section 37 of the *Act*. I accept the landlord's testimony that it took her eight hours to complete the repair. I find the requested rate of reimbursement of \$35.00 per hour to be reasonable.

I find that the landlord has proved that the landlord suffered a loss from the tenant's breach of section 37 of the *Act* consisting of \$185.11 for materials, as evidenced by the receipts entered into evidence and \$280.00 in labour. I find that no mitigation issues are present. I award the landlord \$465.11 for the above repair.

#### Replace broken and missing horizontal blinds

Based on the move in and out condition inspection reports, I find that the tenants damaged the horizontal blinds in all three bedrooms and that the blinds in the kitchen were missing entirely, contrary to section 37 of the *Act*. I find that the tenants' have not provided a preponderance of evidence to refute the move in and out condition inspection reports. PG #40 states that blinds have a useful life of 10 years. I find that at the end of this tenancy the blinds were at least 8 years old but possibly longer as the landlord did not know when they were installed. I find that I am not able to complete a useful life calculation on the horizontal blinds because the landlord has not provided conclusive evidence of their age. The landlord has therefore not proved the quantum of the loss suffered.

Residential Tenancy Policy Guideline 16 (PG #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 find that the landlord has proved that the horizontal blinds were damaged contrary to section 37 of the *Act* but has not proved the loss suffered. Pursuant to PG #16 I award the landlord \$50.00 in nominal damages.

#### Labour to repair wall scratches

Based on the move in and out condition inspection reports, I find that the tenants damaged the walls in the second bedroom and master bedroom, contrary to section 37 of the *Act*. I accept the landlord's testimony that it took her seven hours to complete the repairs. I find the requested rate for reimbursement of \$35.00 per hour to be reasonable and the time taken to complete the repairs to be reasonable given the work completed.

I find that the landlord has proved that they suffered a loss from the tenants' breach of section 37 of the *Act* in the amount of \$245.00 in labour. I find that no mitigation issues are present. I award the landlord \$245.00 for the above repair.

#### Replace missing towel hanger and dimmer knob

Based on the move in and out condition inspection reports and the testimony of both parties, I find that the tenants removed the towel hanger and dimmer knob, contrary to section 37 of the *Act*. I find that I am not able to complete a useful life calculation on the towel hanger and dimmer knob because the landlord has not provided conclusive evidence of their age. The landlord has therefore not proved the quantum of the loss suffered.

Residential Tenancy Policy Guideline 16 (PG #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 find that the landlord has proved that the towel hanger and dimmer knob were missing contrary to section 37 of the *Act* but has not proved the loss suffered. Pursuant to PG #16 I award the landlord \$25.00 in nominal damages.

### Labour to repair shelf and kitchen counter

Based on the move in and out condition inspection reports and the testimony of the parties, I find that the tenants damaged the kitchen counter and the kitchen shelf, contrary to section 37 of the *Act*. I find that the tenants' have not provided a preponderance of evidence to refute the move in and out condition inspection reports. I accept the landlord's testimony that it took an hour to repair the shelf and counter. I find the requested rate for reimbursement of \$35.00 per hour to be reasonable and the time taken to complete the repairs to be reasonable given the work completed.

I find that the landlord has proved that they suffered a loss from the tenants' breach of section 37 of the *Act* in the amount of \$35.00 in labour. I find that no mitigation issues are present. I award the landlord \$35.00 for the above repair.

### Cleaning

Based on the tenant's testimony I find that the tenants did not clean the bathroom at the end of this tenancy, contrary to section 37 of the *Act*.

Based on the move out condition inspection report I find that the tenants did not clean the oven or the fridge at the end of this tenancy, contrary to section 37 of the *Act*. I find that the tenants' have not provided a preponderance of evidence to refute the move in and out condition inspection reports.

I accept the landlord's testimony that it took her a total of three hours to clean the bathroom, the oven and the fridge. I find the requested rate for reimbursement of \$35.00 per hour to be reasonable and the time taken to complete the repairs to be reasonable given the work completed.

I find that the landlord has proved that they suffered a loss from the tenants' breach of section 37 of the *Act* in the amount of \$105.00 in labour. I find that no mitigation issues are present. I award the landlord \$105.00 for the above cleaning.

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 for this application.

**Conclusion**

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

<b>Item</b>	<b>Amount</b>
Repair fridge	\$317.31
Replace vertical blinds	\$25.00
Repair broken door casings (materials)	\$185.11
Labour for replacing broken door casings	\$280.00
Replace broken and missing horizontal blinds	\$50.00
Labour to repair wall scratches	\$245.00
Replace missing towel hanger and dimmer knob	\$25.00
Labour to repair shelf and kitchen counter	\$35.00
Labour to clean oven and fridge	\$70.00
Labour to clean bathroom	\$35.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,367.42</b>

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: June 29, 2022

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Residential Tenancy Branch