



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Landlord) J.S. and C.S.	110056855	MNDL-S, FFL
(Tenant) J.C.	110057930	MNSDS-DR, FFT

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlords filed claims for:

- \$1,002.19 compensation for damage caused by the tenant, their pets or guests to the unit or property – holding the pet or security deposit; and
- recovery of their \$100.00 application filing fee.

The Tenant filed claims for:

- \$1,002.19 the return of the remainder of his security deposit; and
- recovery of his \$100.00 application filing fee;

The Landlords, J.S. and C.S., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about it. During the hearing the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and

written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served the Tenant with their Notice of Hearing documents and evidence by Canada Post registered mail, sent on December 18, 2021. The Landlords provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Landlords’ Notice of Hearing documents and evidence in accordance with the Act. I, therefore, admitted the Landlords’ Application and evidentiary documents, and I continued to hear from the Landlords in the absence of the Tenant.

Further, as an applicant, the Tenant was provided with a copy of his Notice of a Dispute Resolution Hearing on December 29, 2021; however, the Tenant did not attend the teleconference hearing scheduled for July 18, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over 30 minutes and was monitored throughout this time.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Cross-Applicant/Respondent Landlords and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on July 18, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 34 minutes, however, neither the Tenant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant’s Application without leave to reapply**.

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their Applications, and the Landlords confirmed theirs in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlords that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Landlords that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their \$100.00 Application filing fee?

#### Background and Evidence

The Landlords confirmed details from the tenancy agreement, including that the fixed-term tenancy began on September 7, 2021, and was to run to June 15, 2022. The Landlords said the tenancy agreement required the Tenant to pay the Landlords a monthly rent of \$2,600.00, due on the first day of each month. The Landlords said the Tenant paid them a security deposit of \$1,300.00, and no pet damage deposit. The Landlords said that they returned \$297.81 of the security deposit to the Tenant, after calculating the damage that had to be repaired using the rest of the security deposit of \$1,002.19.

The Landlords said that the Tenants vacated the rental unit on December 1, 2021. They said the Parties had conducted a move-in inspection of the condition of the residential property at the start of the tenancy; however, the Landlords said that they did not document this inspection. The Landlords said that they gave the Tenants opportunities to do a move-out condition inspection; however, they said the Tenants texted them before the appointed time to say that they were running for the ferry. The Landlords said that the Tenants departed earlier than anticipated by the tenancy agreement.

The Landlords said that they received a telephone call from the Tenant in November 2021, in which he said he was giving them one month's notice of the Tenant's intent to vacate the rental unit in December 2021. The Landlords said that the Tenant did not understand that he was committed to a fixed-term tenancy until June 2023. However, the Landlord said they came to an agreement with a couple of ladies to rent the place from December 2021 through June 2021. Nevertheless, the Landlords said that the Tenant had damaged the décor, furniture, and the oven. They said the Tenant had left a lot of his belongings – food in the fridge, garbage left in bags outside. He left a note telling them they could take these things to the dump.

The Landlords submitted a monetary order worksheet with their claims, as follows:

	Receipt/Estimate From	For	Amount
1	[disposal company]	Disposal of Tenant's Garbage	\$37.64
2	[appliance retailer]	Replacing broken stove	\$350.00
3	[national hardware store]	Replacing damaged anti-fatigue mat	\$44.79
4	[int'l retail store]	Replacing living room door mat	\$55.99
5	[int'l retail store]	Replacing front door mat	\$55.99
6	[local paint store]	Bedroom paint – LED strip removal	\$200.40
7	[national hardware store]	Mat for covered patio door	\$29.10
		<b>Total monetary order claim</b>	<b>\$773.91</b>

We went through each item in the hearing, as follows:

#### **#1 DISPOSAL OF TENANT'S GARBAGE → \$37.64**

I asked the Landlord how they knew that what the Tenant left behind was garbage, and the Landlords said:

It was their personal chattels that were not included in the unit, and she said take it to the dump. They also said, 'well we'll leave it for the next renters'. I tried it explain that they don't need your kids' toys and bike, then they said to get rid of it. Their friends came by and picked up some of the stuff, but we still had to take toothbrushes left in the bathroom, food in the fridge, etc. I took it myself, that was the fee when you go to the dump .

We were stressing out because we had those ladies coming.

The Landlords submitted a waste removal receipt for the amount claimed.

#### **#2 REPLACEMENT OF BROKEN OVEN → \$350.00**

I asked the Landlords what was wrong with the stove that it needed replacing and not repairing. They said:

The oven door would not close. The hinges on the door were bent – someone landed on it, or something heavy was placed on it. It stayed open about four inches and it would leave the light on. I got quotes for more money for repairs than I could get for a decent used one. I bought a used stove for \$350.00 - see the receipt.

The Landlords submitted a handwritten note dated December 2, 2021, stating that a smooth-top range was purchased in full for \$350.00 cash.

I asked the Landlords how old the damaged stove was, and they said it was about six to eight years old at the start of the tenancy. They said: "It was by no means new, but it was in great condition. I wouldn't stick anyone in my units that didn't have a working oven."

### **#3     REPLACING ANTI-FATIGUE MAT → \$44.79**

I asked the Landlords what was wrong with this mat that it required replacing, and they said:

This – they are very soft - it was left outside from September to December. It was saturated, snowed on. When we picked it up, it was broken down from all the water and it was. . . . She didn't care about my stuff. It was clear in the evidence that there was a lack of care of other people's things.

The Landlords said that this mat was brand new at the start of the tenancy. They submitted a receipt for a new anti-fatigue mat for the amount claimed.

### **#4     REPLACE DAMAGED LIVING ROOM MAT → \$55.99**

Again, I asked the Landlords what happened to this mat that it needed replacing. The Landlords said:

She hid it. She put in another indoor mat - you know those indoor/outdoor mats in a covered, but outdoor space. She covered it. It was wool; it was one of my favourite ones. It was an accent piece. I was looking all over for it, so I texted her, she was answering every question except for that. As I asked her for the third time, and then I saw the tassels underneath another mat. I took a picture and said don't worry, I found it. I was very, very, very, annoyed. It was left outside and it was just destroyed.

The Landlords said that this mat was less than six months old at the start of the tenancy. The Landlord said:

And I can't find anything similar - what I replaced it with was not the same. There are pictures of the rugs left outside that were just destroyed. I didn't get to replace everything, because I haven't been able to find replacements. You don't want to just settle, either, when you actually care.

The Landlords submitted a receipt for the purchase of a replacement mat for the living room, which was for the same amount as claimed here.

**#5 REPLACE FRONT DOOR MAT → \$55.99**

The Landlords described this mat as being for the front door when you walk in. They said it was less than six months old, and it was similarly, irreparably damaged by the Tenants, who, the Landlords said, left it out in the elements.

**#6 LED STRIP REMOVAL – BEDROOM PAINT → \$200.40**

The Landlords said they incurred this cost, because the Tenants had placed LED strips in the third bedroom walls. The Landlords said that when they removed these strips the paint came with it. They submitted a bill for base coat, the paint, and a brush. The Landlords said that the Tenants should have done this themselves.

The Landlords submitted a receipt for the purchase of paint supplies that came to the amount claimed.

**#7 REPLACE FRONT DOOR MAT → \$29.10**

The Landlords described this claim as for "...the outdoor mat they left out from under cover. It was like less than six months' old." The Landlords submitted a receipt for having purchased a new mat to replace that which was ruined by the Tenants.

**#8 REMAINING AMOUNT CLAIMED**

I noted that the amounts the Landlord have claimed do not add up to the total claimed in this Application. The Landlords explained this, as follows:

There were a couple of things I wasn't able to provide receipts for, such as the

kitchen drawer and the labour to get the painter in here to get the painting done. We claimed nothing for his labour, nor the cabinet guy. It's hard to get tradesmen; the only way was a cash job on their time off. So that's where the discrepancy would be there. I didn't get the receipts for the pillows – about \$60.00 for throw pillows for the couch.

Also, there was a mouldy vase that we valued at \$100.00 to replace it, at a minimum. The kitchen drawer cost \$200.00 cash to fix. In the third bedroom, they sanded and painted all four walls and billed us \$50.00 a wall.

The couch throw pillows were \$30.00 each, so we're claiming \$60.00 – they were – the property is on the lake and it was December – all of the décor is lake themed and not easy to find lake themed décor in December.

These undocumented claims amount to \$360.00, for a total claim of \$1,133.91. before the Application filing fee is considered.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlords testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

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

("Test")

### **#1 DISPOSAL OF TENANT'S GARBAGE → \$37.64**

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. It is not a landlord's job to take a

tenant's garbage to the dump under the Act. The Tenants were responsible for leaving the residential property reasonably clean, undamaged, and ready for the next tenants.

I find that the amount the Landlords claimed for taking the Tenants' garbage to the dump is quite reasonable. I, therefore, **award the Landlords with \$37.64** for this claim, pursuant to section 67 of the Act.

## **#2 REPLACEMENT OF BROKEN OVEN → \$350.00**

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

In PG #40, the useful life of an oven is 15 years. The evidence before me is that the stove was new in approximately 2014, so it was approximately seven years old at the end of the tenancy and had eight years or 53% of its useful life left. The Landlord said that the oven was in good condition at the start of the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

I find that the Landlords' undisputed evidence is that the Tenants damaged the oven in the rental unit, such that it would be more expensive to repair than to purchase another used oven. I find that the Landlord did what was reasonable in the circumstances to minimize or mitigate their damage or loss, by purchasing a used oven, rather than a new one to replace the used oven that the Tenants damaged.

I find that the replacement oven that the Landlords purchased reflects the depreciation of the original oven, and therefore, it does not need to be depreciated further for the compensation calculation. I, therefore, **award the Landlords with \$350.00** for this claim, pursuant to section 67 of the Act.



**#3 REPLACING ANTI-FATIGUE MAT → \$44.79**

The Landlords undisputed evidence is that the Tenants ruined this mat by leaving it out in the elements for the duration of their tenancy. As such, I find they are responsible for replacing it, as it was new at the start of the tenancy. Accordingly, I **award the Landlords with \$44.79** for this claim, pursuant to section 67 of the Act.

**#4 REPLACE DAMAGED LIVING ROOM MAT → \$55.99**

Again, I find that the undisputed evidence before me is that the Tenant ruined this living room mat owned by the Landlords. I find that the Landlords mitigated their claim by purchasing something as close as they could find to the damaged mat; however, I infer from the Landlord that what was purchased was of less value than that which was damaged. I **award the Landlords** with recovery of this cost from the Tenants of **\$55.99**, pursuant to section 67 of the Act.

**#5 REPLACE FRONT DOOR MAT → \$55.99**

As with the prior mats that were damaged by the Tenants, I **award the Landlords** with **\$55.99** for the replacement of this mat, pursuant to section 67 of the Act.

**#6 LED STRIP REMOVAL – BEDROOM PAINT → \$200.40**

Without evidence to the contrary, I find the Landlords have met their burden of proof with this claim, and I, therefore, **award** them with **\$200.40** from the Tenants, pursuant to section 67 of the Act.

**#7 REPLACE FRONT DOOR MAT → \$29.10**

As I find they have met their burden of proof for this undisputed claim, I **award** the Landlords with **\$29.10** pursuant to section 67 of the Act.

**#8 REMAINING AMOUNT CLAIMED**

The Landlords have identified other items of cost they incurred, because of the condition in which the Tenant left the rental unit. However, the Landlords were unable to provide support documents to prove the cost they incurred in this regard.

As set out in Policy Guideline #16 ("PG #16"), "The purpose of compensation is to put

the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

PG #16 also states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. 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.

In this set of circumstances, I find the Tenant caused an considerable amount of damage to the residential property in the small amount of time in which they lived in the rental unit. I find that the Landlords have been responsible in minimizing or mitigating their damage by replacing items with something of less value than the lost item, in at least one case.

In this set of circumstances, I find it reasonable to award the Landlords with a nominal amount of \$100.00 for the repairs that were completed on a cash basis without receipts, pursuant to Policy Guideline #16. As such, I **award the Landlords** with an additional **\$100.00**, pursuant to PG #16 and sections 62 and 67 of the Act.

#### Summary and Offset

As the Landlords have been predominantly successful in their Application, I also award them with recovery of their **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant’s \$1,300.00 security deposit in complete satisfaction of the Landlords’ monetary award. I authorize the Landlords to retain **\$973.91** of the Tenant’s remaining security deposit and return the remaining **\$28.28** to the Tenant, as soon as possible.

	Receipt/Estimate From	For	Amount
1	[disposal company]	Disposal of Tenant's Garbage	\$37.64
2	[appliance retailer]	Replacing broken stove	\$350.00
3	[national hardware store]	Replacing damaged anti-fatigue mat	\$44.79
4	[int'l retail store]	Replacing living room door mat	\$55.99
5	[int'l retail store]	Replacing front door mat	\$55.99
6	[local paint store]	Bedrm paint – led strip removal	\$200.40
7	[national hardware store]	Mat for covered patio door	\$29.10
		<b>Sub-total</b>	<b>\$773.91</b>
8	Undocumented claims	Nominal award	\$100.00
	RTB	Application filing fee	\$100.00
		<b>Total Awarded</b>	<b>\$973.91</b>
	Remaining security deposit	Amount retained	\$1,002.19
		<b>Return to Tenants</b>	<b>(\$28.28)</b>

### Conclusion

The Landlords are predominantly successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenant's Application is dismissed without leave to reapply, as the Tenant did not attend the hearing to present the merits of his case.

The Landlords are awarded **\$873.91** for their compensation claims, in addition to being awarded recovery of the **\$100.00** Application filing fee from the Tenant, for a total award of **\$973.91**.

The Landlords are authorized to retain \$973.91 from the Tenant's remaining security deposit of \$1,002.19, and the Landlords are Ordered to return the remaining **\$28.28** of the security deposit to the Tenant as soon as possible.

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: July 25, 2022

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Residential Tenancy Branch