



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$8,915.00 for damages for the Landlord; for a monetary order of \$657.75 for damage or compensation for damage under the Act, retaining the security deposit to apply to these claims; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, Z.L. ("Agent"), 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 person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide his 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 Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 10, 2022. The Agent provided a Canada Post tracking number as evidence of service.

The Agent said that he applied for this hearing on December 22, 2021, but he did not

receive any response from the RTB, therefore, he contacted us on January 10, 2022, and discovered that the Notice of Hearing had been sent to his Hotmail address, but he had not received it. The RTB emailed him the documents again, but again, it did not arrive at this email. As a result, the Agent gave the RTB another email address, and the Agent received this package in that email on January 10, 2022.

Based on the evidence before me, I find that the Tenant was deemed served with the Notice of Hearing documents and the Landlord's evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Agent confirmed these in the hearing. He also confirmed his 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 Agent that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised him that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that he was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed that the fixed-term tenancy began on June 1, 2021, and ran to May 31, 2022, then operated on a month-to-month basis. He confirmed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$2,250.00, due on the first day of each month. The Agent said the Tenant paid the Landlord a security deposit of \$1,125.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full to apply to these claims.

The Landlord submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1	[L.] Construction Ltd.	Repair/Appliances/Clean	\$8,915.00
2A	[S.] Appliances Service	Appliance inspection	\$231.00
2B	[E.] Properties Services	Repair	\$85.50
2C	Locksmith	Change locks	\$189.00
2D	Renovation company	Repair	\$145.00
		Total claim	\$9,572.75

In the hearing, the Agent explained these claims to me, as follows.

#1 COMPENSATION FOR DAMAGE UNDER THE ACT → \$8,915.00

The Agent said the Tenant abandoned the rental unit, as the Agent did an inspection on November 10, 2021, and found the property empty of the Tenant's possessions.

In the hearing, the Agent said:

The Tenant moved out and we have this property management company, which went in and did an inspection for moving out. Almost all the appliances were unfunctional - can't be used - except the laundry set. The stove, dishwasher, refrigerator, microwave plus fan - all damaged beyond repair. Photos were taken and a report written by [N....Property Management] ("Property Managers") on November 10, 2021. You can see that in the sun room, it was contaminated by red paint. In some areas of living room, as well.

In the report, you can see that damaged furniture and a broken TV. The bed was labelled as 'dirty'. We then had to recover it - make it rentable. I hired a contractor to quote on the renovation/repairs, and they provided a quote.

The property management company hired an appliance service company to send all the appliances. They issued a report: refrigerator: not fixable; dishwasher: not repairable; microwave – part not available; stove – door missing – not replaceable. Only the laundry was working.

I had the property management to contract out for repairs, but they were too slow; they are busy. So, I hired my own contractor, who quoted a repair. A couple doors are broken, almost all the appliances were changed, furniture was damaged - not usable. Those have to be dumped.

Payment was made in two installments. I made a deposit of \$4,800.00 on December 1st, and they started work. The second invoice for the remaining amount was a payment of \$4,115.00.

The Agent submitted photographs and invoices to support the Landlord's claim in this regard. The invoices described the work as: "New Appliance replacement, repairing and painting, Cleaning and Disposal." The photographs included:

- missing smoke detector from the front hall;
- doors off hinges;
- dirty walls;
- dirty bathroom;
- dirty/stained flooring;
- discarded items left around;
- refrigerator full of discarded food;
- dirty stove;
- oven door handle missing;
- microwave handle missing; and
- red substance splashed on doors, floors, and walls.

#2 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$657.75

The Landlord's second claim is composed of four separate items, which are set out in the Landlord's monetary order worksheet.

	Receipt/Estimate From	For	Amount
1	[L.] Construction Ltd.	Repair/Appliances/Clean	\$8,915.00
2A	[S.] Appliances Service	Appliance inspection	\$231.00
2B	[E.] Properties Services	Repair	\$85.50
2C	Locksmith	Change locks	\$189.00
2D	Renovation company	Repair	\$145.00

		Total claim [he forgot to add GST]	\$9,572.75
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A. APPLIANCE INSPECTION → \$231.00

The Landlord submitted an inspection report of the appliances in the rental unit. The inspection included the brand, name, and model number of the appliances examined.

The results of this company's inspection are as follows:

Refrigerator:

White in color, existing dimensions..., covered with mold, not fixable.

Dishwasher:

White in color, water leaks in front, door damage, not repairable.

Microwave:

Black in color, works in good condition, but the door handle was damaged, part is not available.

Stove:

White in color, oven door is missing and 2 top burners not working, door is not available.

Laundry center:

White in color, both dryer and washer are still workable.

The Landlord was charged \$231.00 for this appliance inspection, which assisted in determining what could be fixed and what had to be repaired.

B. REPAIRS → \$85.50

The Landlord submitted an invoice dated October 15, 2021, for repairs for \$89.78 (which is \$85.50 plus GST). The Agent said the contractor for this was hired by the Property Managers to fix items when the Tenant was still in the unit.

I asked the Agent why the Tenant has to pay for things that are broken in the residential property during the tenancy. The Agent said:

It's hard to prove that they damaged it, since we don't have a pre-tenancy inspection, but the freezer door hinge off, and the cupboard door off? It's hard to say that's not their fault.

The invoice sets out the details of the claim, as follows:

1. Floor strip loose;
2. Cupboard door falling off;
3. Pocket door jammed;
4. Freezer door hinge off.

The "Diagnosis/Solutions" were set out, as follows:

- Repaired:
1. Kitchen cabinet door hinges
 2. Glued it for floor threshold
 3. Adjusted freezer door hinge

The contractor billed \$80.00 for labour and \$5.50 for materials. GST for this bill was \$4.28, for a total bill of **\$89.78**.

C. CHANGE LOCKS → \$189.00

The Agent said that the Landlord had to have the locks changed on the rental unit, because the Tenant failed to return the keys. The Agent said: "We were worried that he would come back. We had to change it right away."

The Landlord submitted an invoice from a locksmith, whose acts included:

Rekey one deadbolt lock with 2 keys.....	\$120.00
Duplicate 2 extra keys.....	10.00
Remove/replace one mailbox lock with 4 keys....	<u>50.00</u>
Subtotal	\$180.00
GST 5%	<u>9.00</u>
TOTAL	<u>\$189.00</u>

D. REPAIRS → \$145.00

The Agent said that these repairs addressed the refrigerator and a cabinet door under the sink, which required a different contractor. He said: "The Tenant was complaining

that the fridge door and the cabinet fell off, before the move in; I showed him the unit and they were okay. I just sent over the contractor to fix it.”

The Landlord submitted an invoice from a renovations company with the following details:

Fridge Axis and attachment Repair	\$ 75.00
-Labor	
-Parts	
Kitchen Cabinet Door Repair – Under the sink	\$ 45.00
-Labor	
-Parts	
Service Call	\$ 25.00
Subtotal	\$145.00
GST 5%	<u>7.25</u>
TOTAL	<u>\$152.25</u>

I note the Agent neglected to include the GST in the Landlord’s claim.

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 Agent testified, I let him know how I analyze 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 Landlord must prove:

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

(“Test”)

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the

action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

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."

#1 COMPENSATION FOR DAMAGE UNDER THE ACT → \$8,915.00

I find from the evidence before me that the Tenant damaged the rental unit in ways that were more than normal wear and tear. I find that the Landlord has met her burden of proof on a balance of probabilities to establish that she is owed compensation from the Tenant for the damage and debris he left behind.

I find that the Tenant rendered appliances – an expensive component of residential properties – unrepairable, for which the Landlord had to spend a lot of money to replace them. The Landlord's photographic evidence reveals the poor condition in which the

Tenant left the residential property, for which the Landlord incurred repair costs.

I find that the Landlord has provided sufficient evidence on a balance of probabilities to meet her burden of proof in this claim. I, therefore, **award the Landlord with \$8,915.00** from the Tenant pursuant to sections 32, 37, and 67 of the Act.

#2 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$657.75

A. APPLICANCE INSPECTION → \$231.00

I find that this claim falls squarely within the Test noted above. I find that the Tenant's actions in leaving the rental unit, including chattels, damaged violated section 32 (3) of the Act. This section says a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant or persons permitted on the property by the tenant. Also, section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged, except for normal wear and tear.

I find that the Tenant violated the Act in this regard, and that the Landlord incurred the cost of evaluating the extent of the damage – whether appliances could be repaired or had to be replaced. The value of this cost is set out in the contractor's invoice as \$231.00, and therefore I find that the Landlord has established the value of this claim.

The Agent said that they used contractors to assist in this matter when the Property Manager was moving too slowly. The Agent took the matter into his own hands and found a contractor to finish the work. I find that the Landlord has met the requirements of the Test in this matter, and I, therefore, **award the Landlord with \$231.00** from the Tenant for this claim, pursuant to section 67 of the Act.

B. REPAIRS → \$85.50

Without evidence to the contrary, I find I agree with the Agent that the damage that was repaired in this claim was more likely than not done by the Tenant or someone he permitted to be in the residential property. I find the Landlord has provided sufficient evidence to meet her burden of proof in this matter on a balance of probabilities. I, therefore, **award the Landlord with \$89.78** from the Tenant, pursuant to sections 32, 37, and 67 of the Act.

C. CHANGE LOCKS → \$189.00

Section 25 of the Act sets out landlords' and tenants' requirements surrounding rekeying locks for rental units. Section 25 states:

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of

access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Policy Guideline #1 states: "The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense."

However, section 25 of the Act states that it is a landlord's responsibility to re-key locks to the rental unit, if they are so requested by subsequent tenant(s). As a result, I find that the Landlord does not have the authority under the Act to charge the Tenant for the cost to re-key the rental unit; therefore, I **dismiss this claim** without leave to reapply.

D. REPAIRS → \$145.00

Without evidence to the contrary, I find I agree with the Agent that the damage that was repaired in this claim was more likely than not done by the Tenant or someone he permitted to be in the residential property. If this damage existed at the start of the tenancy, I find it more likely than not that the Tenant would have complained much earlier in the tenancy.

I find the Landlord has provided sufficient evidence to meet his burden of proof in this matter on a balance of probabilities. I, therefore, **award the Landlord with \$152.25** from the Tenant, pursuant to sections 32, 37, and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset

against the Tenant's \$1,125.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain **\$1,125.00** of the Tenant's security deposit for this purpose.

	Receipt/Estimate From	For	Amount Awarded
1	[L.] Construction Ltd.	Repair/Appliances/Clean	\$8,915.00
2A	[S.] Appliances Service	Appliance inspection	\$231.00
2B	[E.] Properties Services	Repair	\$89.78*
2C	[Locksmith]	Change locks	\$0.00
2D	[Renovation company]	Repair	\$152.25*
		Total claim [*Agent forgot to add GST]	\$9,388.03

Given the Landlord's success in this matter, I also award her with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

After deducting the security deposit amount from the total awarded, I grant the Landlord a **Monetary Order** of **\$8,363.03** from the Tenant, pursuant to section 67 of the Act.

Conclusion

The Landlord is predominantly successful in her Application, as her Agent provided sufficient evidence to meet the burden of proof on most of her claims on a balance of probabilities.

The Landlord is also awarded recovery of her **\$100.00** Application filing fee for a total award of **\$9,488.03** from the Tenant. The Landlord is authorized to retain the Tenant's \$1,125.00 security deposit in partial satisfaction of the awards.

I grant the Landlord a **Monetary Order** of **\$8,363.03** from the Tenant for the remainder of the awards owing. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 29, 2022

Residential Tenancy Branch