



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-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 \$3,100.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover his \$100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence, although the Tenant said that the quality of the Landlord's photographs was poor in her copies. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these 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 Parties 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 Parties 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

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

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 1, 2021, and ran to June 30, 2022, and then operated on a month-to-month basis, until the Tenant moved out on July 31, 2022. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$3,300.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$1,650.00, and no pet damage deposit. The Landlord said he still holds the security deposit to apply to his claims.

The Landlord had five claims in his Application, which totalled to more than the \$3,100.00 he was claiming overall; however, we reviewed each claim consecutively in the hearing.

	For	Amount
1	Apartment cleaning	\$619.50
2	Damaged cooktop	\$1,794.23
3	Walls/ceiling/doors	\$913.50
4	Cleaning supplies	\$22.89
5	Lightbulbs	\$65.39
	<b>Total monetary order claim</b>	<b>\$3,415.31</b>

**#1 APARTMENT CLEANING → \$619.50**

The Landlord submitted photographs of the rental unit, which included the following:

- A dirty bathroom fan;
- A dirty air conditioner filter;
- A dirty washer/dryer unit;
- An allegedly dirty bathroom sink, that did not look dirty in the photograph;
- Dirty windows on the inside, although difficult to tell;
- Dirt marks on a door;

- A few small items left behind in the bathroom cupboard;
- Somewhat dirty inside the refrigerator;
- Multiple items left behind the microwave in the kitchen; and
- A dirty hood fan;

The Tenant submitted a number of photographs, as well, except that hers were not labelled, other than to say “pictures taken on move out”. Rule 3.7 addresses how evidence must be submitted to be considered. The photographs were labelled once opened, but they were all virtually the same description when listed in evidence.

### **3.7 Evidence must be organized, clear and legible**

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient, and effective process, identical documents, and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

I reviewed some of the photographs submitted by the Tenant, and the unit looked clean in those I viewed; however, they were not of the same spots in which the Landlord’s photos showed uncleanliness.

I asked the Landlord how he selected the cleaners that he did, and he said:

I called three companies, and they all had good ratings. This was the first one, when they can come and that there were two people. All companies’ rates were between \$70 – \$80 per hour. I went with the one that was rated higher.

The Landlord submitted an invoice from his cleaners setting out their work, as follows:

House cleaning (\$80.00/hr) x 4 hr	\$320.00
Appliances	30.00

Additional cleaning, removal of  
hair, urine odour from many  
areas of the apartment, hair from  
bathroom, fans, fridge, air intake  
plugged, shower basin  
(\$80.00 ea.) x 3

	<u>\$240.00</u>
Sub-total	\$590.00
GST	<u>29.50</u>
<b>TOTAL PAID</b>	<b><u>\$619.50</u></b>

The Tenant said she arranged for cleaners, as well, and that she paid “\$285.00, roughly”. She said that her cleaners spent three hours cleaning, prior to the Landlord’s cleaners’ work. The Tenant said that together, the cleaners would have charged about \$1,000.00 for about 1,200 square feet.

The Landlord said:

I took pictures as well, and you can look from the doorway – there is dryer not cleaned – the collection trap in the dryer was still dirty and broken. The kitchen oven was clean, but not the cooktop, and not the fridge. They only charged me \$30.00 for one appliance.

The windows were not cleaned from the inside or the outside where the balcony is. Outside is not a tenant’s responsibility, but when there’s a balcony it should be. See my pictures of the window.

The cleaners said they could do it in four to five hours, but when they found what looked like animal hair, more time was needed. There is a list of what else they did on top of the regular amount. I was in and out and locked the door after them.

Her cleaning was sub-standard, such as the mess behind the microwave. And I opened drawers of the island, and there was still stuff inside. The cleaners directed me to the bathroom under the cabinet, and some clothing was left. The drain for the master bathroom was plugged, but the cleaners said they are not touching drains – that’s why I claimed for extra supplies for cleaning. When I started going to apartment there was a window handle broken, a shower handle broken, but I didn’t charge for them.

The Tenant said:

The shower handle window was broken – it’s a 12-year-old building. I prepared

the apartment very well. The washroom was not in brand new condition. Also, you said you let the cleaners come in, but you were not there supervising them. How would I know how long they were there cleaning? Four hours of cleaning without supervision?

See my pictures - windows 8 and 9 in the master bedroom - and 11. The cleaners did wipe down the windows.

The condition of the washroom was already bad; it had mould on the bottom when you gave it to me, so I'm not responsible.

I note, however, that the condition inspection report does not indicate there having been mould in a bathroom at the start of the tenancy.

## **#2     DAMAGED MIELE COOKTOP → \$1,794.23**

The Landlord said that the cooktop was from when the residential property was new, so it is, therefore, nine years old when the Tenant moved in approximately two years ago.

I asked the Landlord what was wrong with the cook top at the end of the tenancy, and he said: "The top was cracked – damaged. I called around, the cooktop glass is not replaceable. A new unit of the same kind was \$2,700.00, so I purchased [a different kind]."

The Tenant said:

See my pictures of the stove top #27 – I lived in this building for two years, and it was a 12-year-old building. I was not aware of damage on the stove until the day of my move. It's a blemish. There's no open glass, no dents, all four elements are still working. I would have brought it up, if it wasn't working. To replace a \$2,000.00 stovetop that had no dents, no open glass, and just a blemish?

I asked the Landlord why he had to replace it, if the elements still worked? He said:

Look at the pictures where I put fingers on the element - it has a cracked top. You have issues of liquids getting in there. It is high voltage inside - a fire hazard. It is negligence. It is up to [the Tenant] to say when it is damaged. This is a broken appliance, and you can call any of the companies. If you broke it, it's damaged and has to be replaced. I checked to see if you can change the glass,

but it's a pretty thin unit and they don't allow it.

To drop the cost of this replacement, I didn't go with the same company, I went from \$2,600.00 to \$1,700.00. I would not allow anyone else to use this unit, because of the fire hazard.

I asked the Landlord how he knew that the crack was a fire hazard. He said:

A crack on a large element? The crack would allow liquids inside the unit. I knew we were going to have this discussion. I have it in my garage, if someone wants to examine it.

The Tenant said: "I was not aware of this flaw on your stove until the day I left - the final walk through. During my tenancy, it was not visible to the naked eye unless you look really closely."

### **#3 WALLS/CEILING SECTIONS → \$913.50**

I asked the Landlord to explain this claim, and he said:

The wall areas maybe needed a coat. When it was vacated, I made a picture of doors that had dark marks; [a cleanser] should have been used. The drapes had been rubbing against the wall leaving marks. The bar at the bottom of each drape – it wouldn't have left a mark, if it were left in the centre.

On the ceiling, there is dark marking that extends, and pretty much the ceiling had to be painted. There are pictures where the painters are indicating the whole job. But it's true that the unit when I gave it to her, the paint was mismatched. Then there were halls; after the screws were removed, they were filled with gypsum. According to the [Act], tenants must repair walls where nails are used.

Since the Landlord mentioned that a cleaner should have been used, I asked him why his cleaners did not get these marks out. He said: "Good question; I have no answer." The Landlord also said that the rental unit had been painted four years prior.

The Tenant responded:

The receipt description is for fixing and repairing on two doors, and four areas of the ceiling and walls. They repainted the rest of the ceiling and walls and the door for \$2,630.00. But the pictures he provided were of two doors. The stuff

happened from when a jacket hung and the zipper hit it. I believe that [the cleanser] would have got that off.

The doors didn't need to be painted. See pictures 10 and 18. All the holes were puttied and sanded - they just needed painting. Did he have the whole wall painted? He said the old tenant had previously painted the walls in the second bedroom and had mismatched the paint.

Which walls were painted, and why – and it says some areas of the ceiling?

The Landlord said:

The total paint job was \$3,500.00, and your portion was \$870.00 plus tax. And the painter had to go over the ceiling the whole ceiling, then all the walls. When you look at a ceiling, you can't just paint four areas, because you can't match four-year-old paint. So, I'm saying I'm covering most of it, and this is your portion. The pictures show the marks.

The Tenant replied:

The TV mount was a small area of the wall. If he was fine having another bedroom with mismatched paint, why the need to have to paint the full wall in the bedroom? Why did he want me to pay for that when he was fine with other tenant not doing it?.... Why am I paying for everything to be painted?

I reminded the Tenant that the Landlord was not claiming the whole paint cost from her, but just a portion.

The Landlord said:

I understand what you're saying. The second bedroom has mismatched paint. I didn't touch it, but I disagree with you always going back to this area and not feeling negligent for others. Going back to drapes – I was not present; I can't speak 100% for window coverings, but windows wouldn't make those marks.

Next to the fridge; you had a mirror there. Were you using candles? There are black marks that occurred while you were there. The TV mount? Any painter would tell you, even if you have a small area, you have to paint the whole section of the walls, because otherwise it would be what happened in the second

bedroom. The last thing is the black mark on doors. Why the cleaners didn't do it, I have no answer. Based on the issues, I couldn't re-rent it with second bedroom.

The Landlord submitted an invoice for wall repair and painting. This invoice indicated the following work had been done:

Description		Amount
Fixing & repainting damage on 2 doors, 4 areas of ceiling, 6 areas of walls		\$870.00
Repainting rest of ceiling, walls & doors		\$2,630.00
	<b>Subtotal</b>	\$3,500.00
	GST @ 5%	\$175.00
	<b>TOTAL</b>	\$3,675.00

The Landlord has claimed \$870.00 plus tax from the Tenant for a total of \$913.50.

The Landlord submitted two photographs that showed what looked to be smoke marks on the ceiling. He also submitted a photograph of a bathroom ceiling; however, it is not clear about what he is complaining in the bathroom.

The Landlord also submitted photographs he labelled "Wall section requires painting". The first photograph is of the edge of a wall by a window, which shows dark scuff marks beside the window. The second to fourth wall photographs are of spots that have been puttied and sanded, ready for paint.

The Landlord also submitted two photographs of doors, one being the inside front with a faint dark, horizontal line across the middle of the door. A second photograph of a second door shows slightly dark marks beneath a hook in the door. It looks something like a zipper in a garment could have made slight marks on the door.

#### **#4 CLEANING SUPPLIES → \$22.89**

The Landlord explained this claim for cleaning supplies as being because the cleaners would not clean the drains that the Landlord said were clogged, so he purchased the drain cleaner products, himself.

The Tenant did not comment on this claim.



## **#5 BURNED OUT LIGHTBULBS → \$65.39**

The Landlord said this is the cost to replace the lightbulbs that were burned out in the rental unit. He submitted photographs showing a pot light bulb under the kitchen counter that was burned out. Another photograph shows the oven fan light bulb burned out. The Landlord submitted a receipt for a halogen bulb on which he spent \$8.28. The Landlord submitted another receipt labelled: "Receipt\_for\_lightbulbs\_1"; however, this receipt duplicates the cleaning supplies receipt, unless one of the items is a lightbulb. However, that receipt has been accounted for in the last claim. There were no other receipts for lightbulbs in the Landlord's evidence.

The Tenant's remarks about the lightbulb claim were:

He bought 13 lightbulbs and he didn't change them. Your images show you changed two to three, and one in the den, one by the kitchen, possibly two in the washroom, but you show 13 lightbulbs. And you bought other stuff - sealing for the washroom, paint tools for \$10.00. Your calculations, the money is off by a little bit, but if they're burned out – I take responsibility for them.

However, I cannot find any evidence before me about 13 lightbulbs, but rather, just those noted above.

### 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 Parties 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 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")

## #1 APARTMENT CLEANING → \$619.50

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" ("PG #1") helps interpret sections 32 and 37 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. .

[emphasis added]

I find from the Parties' evidence that the Tenant left the residential property reasonably clean, although there were areas with debris and uncleaned surfaces, which needed attention. However, I find from the Landlord's cleaners' invoice, that they double-billed some aspects, having billed for four hours cleaning, plus appliances, plus "removal of hair, urine odour from many areas of the apartment". The cleaners did not indicate why the latter actions were not included in the initial four hours of cleaning. Further, they spent over seven hours cleaning a rental unit that had already been cleaned to some degree.

As a result, I find that the Landlord's cleaners were hired to bring the premises to a higher standard of cleaning than is necessary under the legislation. I, therefore, deduct three hours of cleaning from this claim pursuant to sections 32, 37, 62 and PG #1. I

**award the Landlord** with \$350.00 plus \$17.50 GST for a total of **\$367.50** from the Tenant, pursuant to sections 32 and 67 of the Act.

## **#2 DAMAGED MIELE COOKTOP → \$1,794.23**

The Parties agreed that the cooktop still worked; however, the Landlord believed that it was unsafe to use it anymore, given the scratch or crack in the top. The Landlord said that he looked into having the glass replaced, but he did not say he consulted someone about the implication of this particular crack or scratch on the cooktop. I find that it is his assumption only that it would be dangerous to use.

However, I find that the cooktop was damaged, in fact, during the tenancy. The Tenant denied having noticed the crack in the cooktop until it was pointed out to her in the end of tenancy inspection. However, I find this to be disingenuous, given how easy it is to see the crack in the Landlord's photographs. Further, the notes in the condition inspection report for the move-in inspection indicate that the stove top or cooktop was in good condition to start.

When I consider the evidence before me overall in this matter, I find the Landlord has met his onus of proof and the steps of the Test on a balance of probabilities. The cooktop was damaged during the tenancy; the Landlord suffered damage to his property, as a result; the Landlord submitted an invoice for the new cooktop; and the Landlord selected a less expensive brand to replace the cooktop, thereby mitigating his loss. Accordingly, I **award the Landlord with \$1,794.23** from the Tenant for this matter, pursuant to sections 32, 37, 67, and 62 of the Act.

## **#3 WALLS/CEILING SECTIONS → \$913.50**

As noted above, a tenant is not generally required to pay for repairs where damages are caused by normal wear and tear to the rental unit. I find that the markings noted in the Landlord's photographs amount to mere wear and tear. Further, even the Landlord said that they should be able to be cleaned with a standard cleanser. The Landlord did not know why the cleaners had not done this.

While the Tenants tried to repair the holes they left in the wall from pictures, etc., they puttied and sanded spots still needed painting. However, as the Landlord acknowledged that he had to paint other areas, because a former tenant had left the paint mismatched, I find that the Landlord was going to paint the unit, anyway, and that it was likely due for painting after four years.

Given this, I find that it would be inappropriate in this set of circumstances to award the Landlord with the full amount sought. However, I **award the Landlord** a nominal amount of **\$100.00** pursuant to section 67 of the Act and Policy Guideline #16.

#### **#4 CLEANING SUPPLIES → \$22.89**

The undisputed evidence before me is that a shower drain required drain cleaner to unclog it, and therefore, I **award the Landlord with \$22.89** for recovery of this cost, pursuant to sections 32 and 67 of the Act.

#### **#5 BURNED OUT LIGHTBULBS → \$65.39**

According to PG #1, tenants are responsible for “replacing light bulbs in his or her premises during the tenancy”. Therefore, the Tenant was responsible for replacing lightbulbs as they burned out and making sure they were all working at the end of the tenancy.

However, I could only find receipts for a halogen bulb for \$8.28. As a result, I **award the Landlord with \$8.28** for this claim, pursuant to sections 32 and 67 of the Act.

#### Summary and Set Off

<u>Award</u>	<u>Description</u>
\$ 367.50	-cleaning,
\$1,794.23	-cooktop,
\$ 100.00	-painting/repair of walls/ceiling/doors,
\$ 22.89	-drain cleaning supplies,
\$ 8.28	-lightbulbs,
<b><u>\$2,292.90</u></b>	<b>Total Awarded</b>

Given that the Landlord was predominantly successful in his Application, I also award him with recovery of his **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

I find this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$1,650.00 security deposit** in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to keep the Tenant's \$1,650.00 security deposit in partial satisfaction of this monetary awards, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** of **\$742.90** from the Tenant for the balance owing on the monetary awards, pursuant to section 67 of the Act.

### Conclusion

The Landlord is largely successful in his Application, as he provided sufficient evidence to support the claims as noted above. The Landlord is awarded **\$2,292.90** from the Tenant. The Landlord is also awarded recovery of his **\$100.00** Application filing fee for a total award of **\$2,392.90**.

The Landlord is authorized to retain the Tenant's **\$1,650.00** security deposit in partial satisfaction of the awards. I grant the Landlord a **Monetary Order** from the Tenant of **\$742.90** for the remainder of the awards owed to the Landlord by the Tenant.

This Order must be served to 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: May 02, 2023

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Residential Tenancy Branch