



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

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This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants requested:

- a monetary order for compensation for loss or money owed, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties confirmed receipt of each other’s applications and evidence. In accordance with sections 88 and 89 of the *Act*, I find both parties duly served with each other’s Applications and evidence.

### **Issue(s) to be Decided**

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Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

## **Background and Evidence**

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I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

This tenancy began on May 15, 2021, and ended on or about July 19, 2024. Monthly rent was set at \$2,725.00, payable on the first day of the month. The landlord had collected a security deposit of \$1,250.00, and a pet damage deposit of \$800.00. The landlord still holds the security deposit, and filed an application on July 23, 2024 to retain the deposit.

### **Landlord's Monetary Claims**

The landlord made the following monetary claims:

<b>Item</b>	<b>Amount</b>
Wicker and Iron Drawer Shelf	\$50.00
Replacement tv mount	\$130.00
Window Screen	\$50.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$330.00</b>

The landlord testified that the tenants removed the cabinet and tv mount, which belonged to the landlord when vacating the rental unit. The landlord is also requesting \$50.00 to replace damaged window screens.

The landlord submitted photos of the missing cabinet from the main bathroom, and stated that the replacement value is \$50.00. The landlord stated that the cabinet was gifted to them from the previous tenants when they vacated on May 14, 2021. The landlord is claiming for the missing cabinet as the tenants had posted it on an online marketplace. A copy of the listing was submitted in evidence.

The landlord also notes that the tv wall mount was missing. The landlord submits that the wall mount was professionally installed, as noted in their photos.

The landlord testified that the second bedroom screen was damaged, and that no defects were noted on the move-in inspection in 2021.

The tenants are disputing the above claims. The tenants testified that the cabinet and wall mounts were items that were gifted to the landlord by previous tenants, and the landlord had informed the tenants that they could dispose of these two items.

The tenants also feel that the amounts claimed are not reasonable considering the condition and age of the two items. The tenants testified that the landlord had informed them that they could dispose of the cabinet if they don't need it.

Similarly, the tenants argued that the tv mount was not functioning anymore, and that the amount claimed was not supported, nor reasonable.

The tenants argued that the window screen was never clipped in during the tenancy due to a screw issue that was present when they moved in.

### **Tenant's Monetary Claims**

The tenants filed for monetary claims totaling \$35,949.00, which exceeds the \$35,000.00 claims limit, and agreed that they would reduce their claim to \$35,000.00 in order for the matter to be heard and decided by the RTB.

The tenants detailed their claims in a Schedule as follows:

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SCHEDULE "A"

Document number	Receipt /Estimate From	For	Amount
1.	Screenshots from Mar 10, 2022 to Jun 1, 2022	Nonfunctioning dishwasher for 86 days	\$3,919.33
2.	Screenshots from May 14, 2021 to Jun 15, 2021	Nonfunctioning oven for 27 days	\$1,653.61
3.	Screenshots from May 23, 2021 to Jul 31, 2021	Nonfunctioning blinds for 89 days	\$5,501.65
4.	Screenshots from Jun 30, 2021 to Oct 22, 2021	Nonfunctioning hood vent for 118 days	\$7,259.37
6.	Screenshots from Aug 15, 2022 to May 31, 2023	Nonfunctioning refrigerator for 17 days	\$1,341.94
7.	Screenshots from Jan 22, 2023 to Mar 4, 2023	Nonfunctioning smoke detector for 556 days	\$15,274.04
<b>Total Monetary Order Claim</b>			<b>\$34,949.94</b>

The tenants also provided the following calculations, and history of rent increases during this tenancy:

**Calculations for loss of essential services:**

<b>Issue</b>	<b>Number of Days Unresolved</b>	<b>Total Rental Costs</b>	<b>Total Reduction Amount</b>	<b>Percentage Used for Reduction</b>
Nonfunctioning dishwasher	86	\$6,642.92	\$3,919.33	59%
Nonfunctioning oven	27	\$2,362.30	\$1,653.61	70%
Nonfunctioning blinds	89	\$7,859.50	\$5,501.65	70%
Nonfunctioning hood vent	118	\$10,370.53	\$7,259.37	70%
Nonfunctioning refrigerator	18	\$1,917.06	\$1,341.94	70%
Nonfunctioning smoke detector	556	\$43,640.10	\$15,274.04	35%
<b>Total:</b>	<b>894</b>	<b>\$72,792.41</b>	<b>\$34,949.94</b>	

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<b>Rental Dates</b>	<b>Monthly Rent</b>
May 15, 2021 to June 14, 2022	\$2,500.00
June 15, 2022 - July 31, 2023	\$2,537.50
August 01, 2023 to June 30, 2024	\$2,725.00

The tenants are requesting the above reimbursements of rent for facilities not provided during this tenancy. The tenants argued that the landlords would repeatedly delay

repairs to services and facilities that were essential to the tenancy, and which impacted their ability to live and enjoy their rental unit.

The tenants argued that they were without a functioning dishwasher for 86 days, and had to coordinate repairs as the landlord was on vacation. The tenants submit that they had to take six days off of work in order to wait for the technician. The tenants had to handwash their dishes, and would constantly have to clean up the flood on the floors, which caused them significant time and stress.

The tenants submit that they had rented the unit expecting two functioning wall ovens. The tenants argued that the landlord replaced one of the ovens with a microwave, which was not comparable. The tenants also argued that they had to use the gas range, along with a non-functioning hood vent, which put their health at significant risk.

The tenants testified that the hood vent was not working for 118 days, and the tenants felt this was an essential appliance as the range was gas powered.

The tenants testified that they had to wait 18 days for a new refrigerator as the landlords were out of town, and difficult to communicate with. The tenants argued that the issue took place during the holidays when they were making Christmas dinner, which necessitated the use of the refrigerator. The tenants testified that they had to request a solution from the landlord, and that the only compensation received was reimbursement for the spoiled food.

The tenants argued that the blinds were also not working properly, which affected their privacy and ability to enjoy the home. The tenants argued that the blinds were constantly in an up position, and as a result the tenants were subjected to heat and bright light, affecting their heat and seizure risk.

The tenants argued that the smoke detector was also not working, which was especially important because of the gas range and non-functioning hood vent.

The landlord disputes the tenants' monetary claims, and argued that they had dealt with the issues as required under the Act. The landlord also argued that the claims are excessive and unreasonable, and questioned whether the tenants truly suffered the losses claimed. The landlord outlined their responses in their affidavits.

## Analysis

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### **Tenant's Monetary Claims**

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

To be awarded compensation for a breach of the *Act*, the claimant must prove:

- the respondent has failed to comply with the *Act*, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the applicant acted reasonably to minimize that damage or loss

Additionally, section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

**27 (1)** *A landlord must not terminate or restrict a service or facility if*

*(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*

*(b) providing the service or facility is a material term of the tenancy agreement.*

*(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*

*(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*

*(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” As noted in these sections, a rent reduction can be applied, even if the service or facility was not essential or material, but as long as there was a reduction in the value of the tenancy agreement. The applicant tenants are still

obligated to support the value of the claims made, and that they acted reasonably to mitigate and minimize the losses claimed.

Regardless of whether the landlords had performed repairs in a manner that complies with the Act, I find the evidence does support that the tenants did suffer a reduction in the value of the tenancy agreement due to the loss of use of the items referenced in their claim. I find the amounts claimed, however, are not reasonable, nor sufficiently supported in evidence.

Although the applicants may have relied on a guide to determine their calculations, the applicant still bears the burden of proof to support the values claimed. In this case, \$35,000.00 would amount to reimbursement of 55% of the rent paid for this entire tenancy. I do not find that the tenants had sufficiently supported that they had suffered a loss equivalent to 55% of the value of their tenancy, especially considering their duty to mitigate or minimize the amounts claimed. I find that the tenants' application falls short in not only supporting the amounts claimed, but also in supporting the efforts made to mitigate or minimize the amounts claimed.

As noted above, I am satisfied that there was some reduction in the value of the tenancy agreement, and I find the tenants are entitled to the following monetary orders.

- 1) **Dishwasher:** Although I accept that the tenants did suffer a loss of use of the dishwasher, I am not satisfied that sufficient evidence was provided to support the loss associated with this. For example, even though the tenants testified to having to take time off of work, the tenants did not provide sufficient evidence to support a loss associated with this, such as lost wages. I also note that \$3,919.33 far exceeds the value of a new dishwasher. I am also not satisfied that the loss of use of the dishwasher amounted to a 59% reduction in the value of the tenancy.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been*

*proven, but they are an affirmation that there has been an infraction of a legal right.*

I find that the tenants failed to support the value of the loss claimed in relation to the broken dishwasher. Accordingly, I award the tenants nominal damages of \$200.00 associated with the temporary loss of use of the appliance.

- 2) **Oven:** Similarly, I am not satisfied that the tenants had supported that they had lost 70% of the value of their tenancy, or \$1,653.61, due to the nonfunctioning oven. I do not find the claim to be reasonable, nor supported in evidence. I find that the tenants could have purchased a second oven for less than this claim. Accordingly, I award the tenants nominal damages of \$5 per day for the 27 days, for a total of \$135.00.
- 3) **Blinds:** I am not satisfied that the tenants had sufficiently supported that they had suffered a reduction in the value of their tenancy equivalent to 70% of the rent, or \$5,501.65, due to broken blinds. Although I accept that window coverings or blinds provide comfort and privacy, the amount claimed far exceeds the cost of replacing these blinds or repairing them. If the landlord had refused or neglected to repair the blinds, the tenants could have mitigated this loss by purchasing new ones for much less than the amount claimed. If the landlord had restricted or terminated an essential facility or service, the tenants had the option to file an application for dispute resolution or request reimbursement for a replacement or repairs. In this case, I find that the tenants' claim falls short in supporting the amount claimed. Accordingly, I award the tenants nominal damages of \$200.00 for the broken blinds.
- 4) **Hood vent:** Although I find the tenants' concerns about a functioning hood vent to be valid, I do not find that the tenants had established that they suffered a 70% reduction in the value of their tenancy agreement, or \$7,259.37 for this loss. I find this amount incredibly excessive and nonsensical considering that they could have purchased and installed a new hood vent for significantly less than the amount claimed. I find this calculation lacks any air of reasonableness. As the tenants failed to support the amount claimed, I award nominal damages of \$20.00 for the non functioning hood fan.
- 5) **Refrigerator:** Similarly, I find the tenants have not sufficiently supported their claim of 70%, or \$1,341.94 , for the refrigerator issue. Although I sympathize with the tenants that the refrigerator broke down during a very inconvenient time, I



find that the landlord did provide reimbursement for the tenants' food, and although the tenants may have had to request it, an alternative option to store their items while awaiting a new refrigerator. I find that the amount claimed far exceeds the cost of a temporary or new refrigerator. Accordingly, I award nominal damages of \$200.00 for this temporary loss.

- 6) **Smoke detector.** I find the tenants' claim of \$15,274.04 for the smoke detector has no merit as the tenants could have easily purchased a replacement for considerably less. I find that the tenants failed to support this loss, or their steps to mitigate it, especially considering that their claim is that this matter remained unresolved for 556 days. Considering the amount of time that had passed without resolution, and the fact that the tenants did not file an application for repairs or for reimbursement of a new smoke detector during this tenancy, I find that the evidence actually demonstrates how the smoke detector was not essential to the tenant's tenancy. I find the tenants' claim falls short in supporting any loss, and I therefore dismiss this claim without leave to reapply.

### **Landlord's Monetary Claims**

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear.

*As noted in Residential Tenancy Policy Guideline #40 "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."*

Based on the evidence and testimony before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had damaged the window screen beyond regular wear and tear. Accordingly, I dismiss the landlord's claim for the window screen without leave to reapply.

Although it is undisputed that the tenants had posted the bathroom storage cabinet online, I find the tenants' explanation to be credible. In review of the posting provided by the landlord, the tenants did not sell the cabinet. The tenants' posting reads "FREE Multipurpose Storage Thingy". I find that this posting aligns with their testimony where the landlord had given them permission to remove the cabinet, especially when the tenants did not keep the cabinet for their own use, nor does the evidence support that

they had benefitted financially by taking it. I find that the posting supports the tenants' version of events, which in fact would have required more energy and time from the tenants than leaving the cabinet behind. I am not satisfied that the tenants had taken the cabinet without the landlord's permission or knowledge, and therefore I dismiss this claim without leave to reapply.

Lastly, the landlords made a monetary claim for the replacement of a tv mount. I am satisfied that the landlord had provided sufficient evidence to support that the tv mount was missing. I am not satisfied that the tenants had demonstrated that they had permission to remove the tv mount. Accordingly, I allow the landlord's monetary claim of \$130.00 for the replacement tv mount.

Under section 72 of the Act, I allow the Landlord to retain a portion of the Tenant's security deposit I satisfaction of the awards granted. The remainder, plus interest, shall be returned to the tenants.

As both parties were partially successful in their claims, both parties obtained offsetting monetary awards to recover their respective filing fees.

## Conclusion

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I issue a monetary order in the tenants' favour in the amount of \$1,925.39 as set out in the table below:

Item	Amount
Monetary award granted to the Landlord for missing tv mount	\$130.00
Monetary award granted to the Tenants	-\$755.00
Less Deposit held plus applicable interest	-\$1,300.69
<b>Total Monetary Order to Tenants</b>	<b>\$1,925.39</b>

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: October 05, 2024