



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding QUALEX-LANDMARK RESIDENCES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDL-S  
                              FFT, MNSD

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on June 14, 2018, the Landlord requested monetary compensation from the Tenants for damage to the rental unit and to recover the filing fee. In the Tenants' Application for Dispute Resolution, filed on June 18, 2018, the Tenants requested return of her security and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 19, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant P.G. attended the hearing on her own behalf and on behalf of the other Tenant, M.K. Both Tenants were represented by an agent, J.Z. at the hearing who gave evidence and made submissions on their behalf. The Landlord was represented by the Resident Manager, C.G.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of their respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Delivery of Decision by Email

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The Landlord's Resident Manager, C.G., testified as follows. He confirmed that the tenancy originally began as a one year fixed term tenancy beginning on June 1, 2016. The tenancy was continued for another fixed term on June 1, 2017 ending on May 31, 2018.

C.G. confirmed that the Landlord continues to hold the sum of \$950.00 as a security deposit.

C.G. clarified that the \$109.71 claimed on the Application was the Monetary Order amount sought after consideration of the Landlord's request to retain the Tenant's \$950.00 security deposit; the Landlord also filed a Monetary Orders Worksheet in which the following amounts were claimed:

Replacement of refrigerator freezer (bottom) door	\$682.71
Repair chips in countertop	\$357.00
Replace bathtub stopper	\$20.00
<b>TOTAL CLAIMED</b>	<b>\$1,059.71</b>

C.G. stated that the Tenants were one of the first tenants in the building such that it was essentially new when they moved in.

C.G. provided in evidence photos of the dent in the refrigerator door, chips in the kitchen counter, and a broken sink plug.

Introduced in evidence was a letter from the appliance repair person dated June 12, 2018 wherein they write that the refrigerator door cannot be repaired, and needed to be replaced. The cost of replacing the door was quoted at \$682.71.

Also introduced in evidence was a quote for repairing the four chips in the counter at an estimated cost of \$357.00.

C.G. confirmed that, save and except for the sink stopper, the Landlord did not repair the above damage as they had exceeded the operating budget for the year and were not in a position to pay for the repairs; as such, the amounts for the refrigerator door replacement and counter repair were estimates.

In response to the Landlord's claims the Tenants' Agent, J.Z., testified as follows.

J.Z. confirmed that the Tenants' position is that the refrigerator door did not require replacement. She stated that the dent in the freezer door is very small and barely noticeable and that the only reason it was visible in the photos taken by the Landlord is because the photo submitted by the Landlord was taken very close up.

J.Z. also stated that before the Tenants moved into the rental unit, the Landlord put a round sticker/bumper on the left hand side of the wall next to the refrigerator. She claimed that the only way to remove the refrigerator drawers for cleaning was to open the door wide enough that it hits the bumper. J.Z. submitted that this is a design problem in terms of the placement of the refrigerator as if the sticker/bumper is there the fridge will not open the entire way; if the sticker/bumper is removed for cleaning the door will hit the wall. A photo submitted in evidence by the Tenants showed the location of the sticker/bumper on the moulding which suggests the dent was caused by the door hitting it when open.

J.Z. also submitted that the counter dents were also very small, and was exaggerated by the Landlord taking the photo very close. She stated that the Tenants didn't use the dishwasher, and the counter dents were the result of simply washing dishes.

J.Z. submitted that the Landlord has not made any of the repairs and since the Tenants moved out in May of 2018, it is clear that none of the repairs were actually required.

In terms of the sink stopper, J.Z. stated that the Tenants were unaware of this issue and have no idea how it occurred.

In reply, C.G. stated that the Landlord put the bumpers on the wall trim to prevent damage to the fridge door. He also confirmed that he lives in the building as well and his door is not damaged and that there is enough clearance for the door to open. He also stated that he has done move out inspections with 20-30 other tenants and there was no other damage to their fridge doors, despite similar placement of the refrigerator.

C.G. further stated that the Tenant, P.G. participated in the move in and move out inspection and was aware of the broken sink stopper at that time.

The Tenants filed for return of their security deposit pursuant to section 38 of the *Act*, as well as recovery of the filing fee. As the Landlord applied for dispute resolution within 15 days of the end of the tenancy, the Tenants' agent confirmed they were not seeking double the deposit.

### Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord alleges the Tenants damaged the refrigerator door, the kitchen counter and the bathroom sink stopper. The evidence before me shows a small dent in the refrigerator door as well as four dents in the counter. The Landlord's agent confirmed that these repairs have not been made, claiming that the operating budget for the rental unit had been exceeded.

The tenancy ended May 31, 2018 and a new tenancy has begun.

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I find the dent in the refrigerator door to be normal wear and tear. I accept the Tenants' evidence that the location of the refrigerator is such that the door hits the wall trim when fully extended; the placement of a bumper indicates the Landlord was aware of the potential for denting of the door due to its location. I am therefore unable to find the Tenants damaged the refrigerator door, and as such I dismiss the Landlord's claim for related compensation.

The photos submitted by the Landlord indicate the counters were a solid surface. Presumably considerable force would be required to dent the counters and I find it more likely the Tenants dropped heavy objects on the counters rather than simply dented them while washing dishes normally.

*Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* provides that counters have a useful building life of 25 years. I accept the Landlord's Agent's testimony that the Tenants were the second tenants in the rental unit such that the building was nearly new when her tenancy began.

The Landlord seeks the repair, not replacement, cost, such that I find the Landlord is fulfilling their obligation to minimize their losses pursuant to section 7 of the *Act*.

I also accept the Landlord's Agent's testimony that the Landlord did not repair the counter as the operating budget had been exceeded. I find the estimate provided by the Landlord to be sufficient proof of the actual amount required to compensate for the counter repair and I therefore award the Landlord the **\$357.00** claimed to repair the counter.

I also accept the Landlord's Agent's evidence that the sink stopper was broken at the end of the tenancy. While the Tenants' Agent may not have had any details as to how this happened, I am satisfied, based on the Move Out Condition Inspection Report filed in evidence as well as the photos submitted by the Landlord that the stopper was damaged during the tenancy. I therefore award the Landlord the **\$20.00** claimed to replace the stopper.

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fee.

### Conclusion

I award the Landlord \$377.00 in monetary compensation for the following:

Repair chips in countertop	\$357.00
Replace bathtub stopper	\$20.00
<b>TOTAL CLAIMED</b>	<b>\$377.00</b>

Pursuant to sections 38 and 72 of the *Residential Tenancy Act* I grant the Landlord authority to retain \$377.00 from the Tenants' \$950.00 security deposit towards the

amounts awarded. The Tenants are entitled to the return of balance of their security deposit in the amount of **\$573.00**.

In furtherance of the above, I award the Tenants a Monetary Order in the amount of **\$573.00**. Should the Landlord not pay the \$573.00 as ordered the Tenants may must serve the Monetary Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: November 28, 2018

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Residential Tenancy Branch