



# 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

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent for the landlord ("the landlord") attended and confirmed that he had permission to speak on behalf of the landlord named in this application, at this hearing. The tenants appeared. Both parties were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants did not acknowledge service of a document, being an invoice, which the landlord testified he sent to them by email on October 24, 2018. The tenants denied receipt. The landlord uploaded the document to the RTB. Rule 3.5 of the *Rules of Procedure* provide as follows:

### ***3.5 Proof of service required at the dispute resolution hearing***

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

I find the landlord has not complied with Rule 3.5; therefore, the document will not be considered in my decision.

The tenants acknowledged service of the Notice of Hearing and all evidentiary materials except for the document referred to in the immediately preceding paragraph. No other issues of service were raised. I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

The landlord acknowledged receipt of the tenants' materials. No issues of service were raised. I find the landlord was served pursuant to section 89 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for damage or compensation pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord testified the parties entered into a month-to-month tenancy agreement beginning July 15, 2016 and ending when the tenants vacated on May 31, 2018. The tenants paid monthly rent of \$2,075.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$1,020.00 which the landlord holds. The tenants have not provided permission to the landlord to retain any portion of the security deposit. The tenants provided their forwarding address on the day they vacated; the landlord acknowledged receipt of the forwarding address.

The landlord seeks a monetary order of **\$1,521.54** as follows:

Item	Amount
Cleaning costs	\$120.00
Reimbursement for the cost of replacing refrigerator door	\$1,401.54
<b>Total</b>	<b>\$1,521.54</b>

The landlord requests authorization to apply the security deposit to the monetary order. The landlord also seeks reimbursement of the filing fee.

The landlord submitted photographs dated May 31, 2018 in support of his claim for cleaning. The landlord also submitted an invoice from a cleaning company in the amount of \$120.00 for cleaning.

The tenants stated they left the premises in a clean state and submitted photographs in support.

The landlord submitted pictures of the refrigerator doors for the top and bottom of a stainless-steel refrigerator. The pictures show 3 small indentations in the front surface doors. The landlord stated he had received an estimate of the cost for the replacement of the door of \$1,401.54. The landlord did not submit a receipt.

The tenants state they are not responsible for any costs associated with the refrigerator. They submitted substantial evidence that the refrigerator was improperly located so that the top door, which had a right hinge, opened to the right into a wall; the bottom drawer required more room to open properly. The wall, placed at right angles to the fridge, was a restriction on the use of the doors and shelves. The tenants testified they took increased care to assure the doors of the refrigerator did not hit the wall. However, the tenants said that over the tenancy, there was some contact between the refrigerator doors and the wall resulting in the three small indentations.

The tenants claimed as follows:

- They used the refrigerator door normally and the dents are the result of normal wear and tear;
- Other tenants in similar units in the building had comparable problems with the refrigerator doors;
- The landlords knew that normal use damaged the refrigerator doors in the units in the building;
- The landlords did not warn the tenants of the risks associated with normal use of the doors;
- The landlords did not take any steps to replace the refrigerator doors with ones that had a left opening hinge, were situated differently, and functioned properly;

- The landlords had sought monetary orders in other cases against tenants in units in the building, claiming replacement of the doors; they had lost some or all the cases;
- The landlord was replacing the refrigerator doors with ones with left hinges instead of right hinges as tenants vacated the units in the building.

The landlord initially denied that any other tenants in the building had problems with denting of the refrigerator doors during normal use. He stated that he had personally conducted thirty or more inspections on moving out and he observed no denting to the refrigerator doors. The tenants suggested that the RTB had previous hearings concerning other tenants' disputes over the landlord's claim for damages to the refrigerator doors. The landlord then acknowledged that the landlord had about 5 such cases heard in the last year concerning denting of refrigerator doors in units in the apartment building and the landlords "won 3 or so". The landlord stated he did not intend to mislead the arbitrator in this case by incorrectly claiming the dents did not happen in other units. He said the previously decided cases were concerning other units and the issues were not similar, though he acknowledged they all involved similar refrigerator doors and dents to the doors because of location of the adjacent wall.

The landlord claimed the units were new when the tenancy began and therefore the refrigerator was new. He stated the unit had "higher quality finishing", that the dents affected the rentability of the unit, he could not fix the dents, and the only solution was to replace the doors.

A condition inspection occurred on moving in and moving out. The report on moving out, dated May 31, 2018, notes the landlord's observations the unit needed cleaning and the refrigerator doors were dented. The tenants wrote their objections on the report to being held responsible for these items. Both parties signed the report.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. After listening to the testimony of the parties and viewing the evidence, I find on a balance of probabilities that the landlord has not established the tenants did not leave the unit reasonably clean. I accept the tenant's evidence, which is supported by their photographs, that the unit was reasonably clean when the tenants left.

I therefore find the landlord is not entitled to a monetary award against the tenants in the amount claimed for cleaning expenses. I dismiss this claim without leave to reapply.

I will now turn to a consideration of the claim for reimbursement of the cost of replacing the refrigerator door. I accept that there were three small dents in the refrigerator door caused by the tenants during their occupancy.

However, I find the reason for the dents is the location of the refrigerator causing it to touch an adjacent wall during normal opening and use. I accept the landlord's own evidence that the doors of the same refrigerators in other units were similarly dented. I find the landlord did not notify the tenants that any special care was necessary in the use of the refrigerator. I find the landlord did not notify the tenants that other tenants were expected to pay for the door replacement and to suggest appropriate steps the tenants could take to lessen the possibility of damage. I find it is inevitable that some damage to the doors would result during the tenants' normal use of the refrigerator. I therefore do not find that the tenants are in breach of any *Act*, regulation or the tenancy agreement. I find on a balance of probabilities that the landlord has not met the burden of proof with respect to this aspect of the claim. The landlord's claim in this regard is therefore dismissed without leave to reapply.

As I have dismissed all the landlord's claims, I do not allow the landlord reimbursement of the filing fee.

The landlord's request to retain the security deposit is dismissed without leave to reapply. As a result, the landlord is required to return to the tenants the security deposit in the sum of \$1,020.00.

I issue a monetary order in the tenants' favour for the return of the security deposit in the amount of \$1,020.00.

### Conclusion

The tenants are granted a monetary order in the amount of \$1,020.00. The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, the 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: November 08, 2018

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Residential Tenancy Branch