



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VICTORIA ROYAL VACATIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S MNDL-S FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agent R.S. attended on behalf of the corporate property management landlord, and is herein referred to as "the landlord". Tenant M.G. attended on behalf of the tenants, and is herein referred to as "the tenant".

As both parties were present, I asked the parties to confirm service of documents. The landlord testified that she filed her Application for Dispute Resolution with the Residential Tenancy Branch on August 15, 2018. However, on August 20, 2018, she filed an Application for Amendment to her original application to provide additional details to her application. The landlord testified that on August 20, 2018 she served the tenants with the Notice of Dispute Resolution Proceeding, the Application for Amendment, and her evidence by Canada Post registered mail. The landlord was unable to recall if the tenants were served individually with two separate Canada Post registered mail packages, or if the two document packages were placed into one registered mail package sent to the one of the tenants. The landlord could not produce the registered mail receipt, with the tracking number, in order to verify what was sent.

The tenant testified that she only received one package, addressed to her husband P.G. who is the other named tenant on the tenancy agreement.

As such, I find that the landlord has failed to prove service of the notice of this hearing on both tenants named on the tenancy agreement. Pursuant to my authority under section 64(3)(c) of the Act, I amend the landlord's application to remove tenant M.G. as a party to this matter as she was not properly served with notice of this hearing. Therefore, any orders pertaining to this Decision are only enforceable against tenant P.G. As tenant M.G. attended the hearing on behalf of both tenants, I have noted tenant M.G. as acting as tenant P.G.'s agent for this matter.

As explained above, I find that only tenant P.G. was served with the notice of this hearing and evidence in accordance with sections 88 and 89 of the *Act*.

The tenant confirmed that they did not submit any documentary evidence in this matter.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damages or loss?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim, or should all or a portion of the security deposit be returned to the tenants?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

#### Background and Evidence

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

A copy of the written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to their written tenancy agreement:

- This fixed-term tenancy began on November 1, 2017 with a scheduled end date of October 31, 2018.
- Monthly rent of \$3,481.25 was payable on the first day of the month.

- The tenants paid a security deposit of \$1,675.00 at the beginning of the tenancy, which the landlord continues to hold.
- A condition inspection of the rental unit was completed by the landlord's agent and the tenant at the beginning of the tenancy, and a written report of this inspection was completed by the landlord and signed by the tenant.
- The tenants provided notice to the landlord to end the fixed-term tenancy early and moved out of the rental unit on July 31, 2018.
- A condition inspection of the rental unit was completed by the landlord's agent and the tenant at the end of the tenancy, however the tenant disagreed with the landlord's agent's recording of the condition of the rental unit and refused to sign the written report. The landlord did not provide the tenant with a written copy of the move-out condition inspection report, until it was provided as part of the evidence package for the dispute resolution hearing.
- The landlord acknowledged receipt of the tenants' forwarding address received by text message on August 2, 2018.

On August 15, 2018, the landlord filed an Application for Dispute Resolution seeking to retain the tenants' security deposit in satisfaction of the landlord's claim for compensation for ending the fixed-term tenancy early and damages to rental unit. During the hearing, the tenant acknowledged that they needed to end the tenancy early and that they damaged the duvet. The parties settled on the costs owed by the tenants to the landlord for breaking the fixed-term lease early and replacing the duvet, in the amount of \$752.39.

The landlord acknowledged that the owner of the rental unit had agreed to waive the claim for damages to the flooring. Therefore, the only outstanding claim remaining pertained to the landlord's claim for damages to the master bathroom and guest bathroom door and drawer veneer panels in the amount of \$1,350.00. Although the landlord's submitted monetary worksheet indicated that estimate was for "fixing bathroom and kitchen doors", the landlord testified that the claim only pertains to the cost of damage to the master and guest bathroom cabinetry.

The landlord claimed that the damage was caused by water dripping from the sink onto the cabinet or hanging damp towels over the cabinet doors.

The tenant disputed this claim and testified that the damage was pre-existing when they moved into the rental unit and that they had pointed it out to the landlord's agent during the move-in condition inspection. However, I note that the damage was not

documented on the move-in condition inspection report, which was signed by the tenant.

In support of her claim, the landlord submitted an estimate for the cost of repairing the cabinetry of \$1,350.00. I note that the estimate is in the form of a printed email, from an employee of a kitchen and custom millwork company, and does not provide a breakdown of costs for labour or materials, or the number of drawers or doors to be fixed or replaced. The estimate appears to reference other work to be completed and simply states in relation to this aspect of the landlord's claim:

*And the cupboards are \$1,350*

I noted to the landlord what appeared to be the landlord's handwriting on the estimate stating:

*Fixing kitchen, bathroom doors & face of drawers*

The landlord confirmed that the repair estimate was only in relation to damage to the master and guest bathroom cabinetry, specifically two doors and one drawer in each bathroom.

The landlord testified that the repair/replacement work has not yet been completed and therefore no final invoice of the actual costs was submitted into evidence.

I note that only the master bathroom is listed on the condition inspection report, and that the guest bathroom was not included on the condition inspection report.

### Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or

damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

*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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:*

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

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

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(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,...

The landlord's testimony regarding the damage to the bathroom cabinet door and drawer veneers was disputed by the tenant. As the onus for proving a claim for damages is on the party seeking compensation, the landlord must prove their claim on a balance of probabilities. When there is disputed testimony, documentary evidence can add weight to shift the balance of probabilities in favour of the claimant seeking compensation.

The landlord submitted into documentary evidence a move-in condition inspection report, signed by the tenant at the beginning of the tenancy, which indicated no damage

to the master bathroom cabinetry. The landlord submitted photographic evidence showing damage to bathroom cabinetry at the end of the tenancy. The move-out condition inspection report was not signed by the tenant as she disagreed with the report, and as a result, a written copy of the report was not provided to the tenant except as evidence for this hearing.

Based on the photographic evidence and the signed move-in condition inspection report, I find that the landlord has proven that the master bathroom cabinetry was damaged at the end of the tenancy. I do not find that the landlord has proven any claim pertaining to the guest bathroom cabinetry as the guest bathroom is not listed on the condition inspection report, and therefore the condition of the guest bathroom was never documented and agreed to by the parties at the start of the tenancy.

However, based on the estimate submitted as evidence of the amount of the damage, I do not find that the landlord has provided sufficient evidence to “verify the actual monetary amount of the loss or damage” nor has the landlord, as the claimant, “proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred”.

The estimate submitted by the landlord does not provide any breakdown of the costs of labour versus the costs for materials. It does not set out the costs for the master bathroom cabinetry separate from the guest bathroom cabinetry, and as explained above, I have only found that the landlord was able to prove damage to the master bathroom cabinetry. The estimate does not set out the cost per drawer or door, nor does it explain if the cost is for repair or replacement. Based on the monetary order worksheet submitted by the landlord, as well as the landlord’s handwritten note on the estimate stating that the estimate also pertains to fixing kitchen cabinetry, which is not part of the landlord’s claim, I find that the estimate does not provide sufficient details to determine if part of the total estimated cost pertains to kitchen cabinetry as well as the master bathroom cabinetry.

The bathroom cabinetry doors and drawers are a veneer rather than a solid wood, and as such, I find the \$1,350.00 estimate for repair or replacement to be an above average cost for veneer cabinetry. The landlord has only submitted one estimate, therefore the landlord has not submitted sufficient evidence that this quote is reasonable and a mitigation of the landlord’s loss. Further to this, the landlord testified that the cabinetry has not been repaired or replaced, even though over four months have passed since the tenancy ended and the rental unit has been re-rented. Therefore, I do not find that

the landlord has proven that there has been an “actual” monetary loss due to the damage.

In summary, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has failed to meet all four of the required elements to prove their claim for damages in relation to the master bathroom cabinetry. As such, the landlord’s claim for these damages fails and is dismissed.

Therefore, I find the landlord is only entitled to a monetary award for the costs of the tenant breaking the fixed-term lease early and for the replacement of the duvet, in the agreed upon amount of \$752.39.

### **Set-off of Landlord’s Monetary Award Against Security Deposit**

The landlord continues to retain the tenant’s \$1,675.00 security deposit and has requested to retain this deposit or a portion of it, in satisfaction of the claims for damages. No interest is payable on the deposit during the period of this tenancy.

In summary, I find that the landlord is entitled to a monetary award for compensation for agreed upon damages in the amount of \$752.39.

Further to this, as the landlord was partially successful in retaining a portion of the security deposit through this application, I find that the landlord is entitled to a partial recovery of the filing fee from the tenants, in the amount of \$50.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the compensation owed by the tenants to the landlord, and the recovery of half the filing fee to be paid by the tenants to the landlord, against the tenants’ \$1,675.00 security deposit held by the landlord.

As such, I issue a Monetary Order in the tenants’ favour in the amount of \$872.61, as explained in the following breakdown:

<b>Item</b>	<b>Amount</b>
Return of security deposit to tenants (currently held by landlord)	\$1,675.00
<b>LESS:</b> Monetary Award to landlord for compensation due to ending the fixed-term tenancy early & replacing duvet	(\$752.39)
<b>LESS:</b> Recovery of filing fee awarded to landlord	(\$50.00)

<b>Total Monetary Order in Favour of Tenants</b>	<b>\$872.61</b>
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Conclusion

I issue a Monetary Order in the tenants' favour against the landlord in the amount of \$872.61 for the return of the remaining amount of the security deposit currently held by the landlord.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: January 2, 2018

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Residential Tenancy Branch