



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 13, 2022, wherein the Landlord sought monetary compensation for the cost to replace a broken window in the rental unit, recovery of the filing fee, and authority to retain the Tenants' security deposit towards any amounts awarded

The hearing was conducted by teleconference at 1:30 p.m. on December 19, 2022. 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 Landlord was represented by the owner, D.M. and his assistant C.J. The Tenant C.W. called in on his own behalf and as agent for T.W.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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 the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord recover the filing fee?
3. Should the Landlord be authorized to retain the Tenants' security deposit towards any amounts awarded?

Background and Evidence

In support of the Landlord's claim, D.M. testified as follows. The tenancy began August 16, 2017 and ended on March 31, 2022.

The Landlord sought compensation for the cost to replace a window which was broken when the tenancy ended. The Landlord performed a move in and move out condition inspection report which indicated the window was broken when the tenancy ended and was intact at the beginning. D.M. testified that at no time during the tenancy did the Tenants inform the Landlord that the window had cracked.

D.M. stated that when they did the move out condition inspection on March 31, 2022 they noticed the crack. When he spoke to the Tenants about this, they initially stated that it was the landscapers who caused the crack, but as the crack was *inside*, not outside this was unlikely.

In terms of the age of the window, D.M. confirmed that the windows are the original windows from 2006 such that when the tenancy ended they were 16 years old.

In terms of the cost to replace the window, D.M. noted that the original cost was estimated to be \$1,091.99, but the actual cost was \$988.29.

D.M. testified that the rental unit was sold in the fall and as such, the Landlord does not have the benefit of the new window. D.M. also stated that to his knowledge no other windows had broken in the strata.

C.W. testified in response to the Landlord's claims as follows. C.W. stated that they did not notice the window was broken until the move out inspection as the window blind

obscures the top where the crack is. C.W. suggested that the window could have been broken at the start of the tenancy and simply not seen at the time of the inspection.

C.W. denied responsibility for the break. C.W. stated that they had an office desk in front of the window and they never opened it and never cleaned it in the five years that they lived there. C.W. stated that the window crack is likely seven or eight feet high as they have nine foot ceilings.

C.W. testified that there were other cracks in the windows in the building claiming that his neighbour, S., also had a broken window.

In reply, D.M. stated that he was not aware of any other broken windows and asked the strata specifically about this and they denied any other broken windows.

In terms of the Tenant's suggestion that the break may have been there when the tenancy began, D.M. stated that they always pull the blinds during the inspections to make sure they are fully functioning. He also noted that the crack starts at 14"-16" from the top of the window and extends to the top. D.M. also noted that the blinds when pulled up would easily show this break line. D.M. also denied that the ceilings were 9 feet.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[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. In this case, the Landlord has the burden of proof to prove their claim.

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.

After considering the testimony of the parties and the evidence before me I find as follows.

I accept the Landlord's evidence that the window was intact at the beginning of the tenancy and was broken when the tenancy ended. This is confirmed in the move in and move out condition inspection filed in evidence.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case I find the Tenant has failed to submit any evidence which would rebut the above. Further, I do not accept the Tenant's submissions that they never touched the window or cleaned it during the 5 years of their tenancy. I find the condition inspection report is compelling evidence of the condition of the window at the beginning and end of this tenancy. And, on balance I am satisfied the window was broken during the tenancy.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. 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.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

*Policy Guideline 40* also provides a table setting out the useful life of most building elements. Accordingly, I discount the Landlord's claim for replacement of the window.

The Landlord testified that the windows were 16 years old at the time the tenancy ended. *Policy Guideline 40* provides that windows have a useful life of 15 years. Accordingly, I find the window had already reached its useful life such that to award the Landlord the full replacement cost would provide the Landlord with a windfall.

I therefore award the Landlord the nominal sum of \$250.00 towards the cost of replacing the window in the rental unit. As the Landlord has only been partially successful, I award the Landlord \$50.00 of the \$100.00 filing fee for a total award of **\$300.00**.

Pursuant to section 72 of the *Act*, I authorize the Landlord to retain \$300.00 from the Tenants' security deposit and order that the Landlord return the \$700.00 balance to the Tenants. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$700.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court.

### Conclusion

The Landlord's application is granted in part. The Landlord is awarded \$250.00 towards the cost of replacing the window. The Landlord is also awarded \$50.00 towards the filing fee for a total of \$300.00. This amount may be retained from the Tenants' security deposit of \$1,000.00 and the balance of \$700.00 must be returned to the Tenants.

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 19, 2023

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Residential Tenancy Branch