



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: MNSD, FFT  
For the landlord: MNDCL-S MNDL-S MNRL-S FFL

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for a monetary order for their security deposit and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, for alleged damage to the rental unit and loss of rent revenue, and for recovery of the filing fee paid for this application.

The tenants and the listed landlord attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the applications. Both parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

I have reviewed the evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I provide only a summary of that which is relevant regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### *Procedural Matters-*

The landlords' monetary claim listed in their application was \$2,660.00; however, the landlords' monetary claim breakdown submitted through their evidence shows an amount of \$6,328.97.

The landlord was advised that I would only proceed on the monetary claim listed in their application, as the claim may not be amended through evidence.

The landlord was offered the opportunity to withdraw her application to deal with the significantly increased claim; however, the landlord chose to proceed on their original listed monetary claim of \$2,660.00.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit and to recovery of their filing fee?

Is the landlord entitled to a monetary order for compensation, damage or loss and to recovery of their filing fee?

#### Background and Evidence

The undisputed evidence is that this tenancy began on October 24, 2017, that it ended on August 11, 2019, monthly rent was \$1,000.00 and the tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00.

The parties confirmed that the landlord has returned the tenants' pet damage deposit.

The rental unit was in the lower suite of a home owned and occupied by the landlords in the upper suite.

#### Tenants' application-

The tenants applied for a return of their security deposit on September 11, 2019, as the landlord continues to hold their security deposit.

The tenants stated that they did not provide the landlord with their written forwarding address as all their financial transactions throughout the tenancy have been by email transfer, both the payment of rent and when the landlords returned their pet damage deposit.

The tenant said that there was no move-in or move-out condition inspection of the rental unit.

The tenants submitted that when they returned the keys on August 14, 2019, and showed the landlord the clean rental unit, the landlord agreed to return their security deposit. Instead, they received a text message from the landlord that some of the flooring was damaged and that the security deposit was not being returned.

*Landlord's response-*

The landlord said that there was floor damage she noticed after the tenants vacated, which was not there prior to the tenancy. The landlord submitted that the tenants' dog urinated on the floor and that the flooring was lifting.

The landlord submitted that she has had three sets of tenants and no previous tenant had a dog, prior to the tenants here.

The landlord submitted that the tenants also caused water to come out of the washing machine from leaving keys in their pockets, which caused damage.

Due to the damage by the tenants, the landlord submitted they did not return their security deposit.

Landlords' application-

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Water damage to flooring	\$1,500.00
2. Cleaning	\$60.00
3. Unpaid rent for September	\$1,000.00
4. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,660.00</b>

The landlord's relevant evidence included, but was not limited to, photographs of the areas in the flooring to which the landlords' claim pertained, a professional flooring letter, text messages between the parties, and a past tenant's letter.

*Damage to flooring-*

In support of her application, the landlord said that the tenants' dogs damaged the flooring by urinating on the floor, causing it to lift. The landlord said that there was an overwhelming odour of urine from the floor and that she saw used pee pads in their shared garbage bin.

The landlord submitted that the actions of the tenants caused water to leak out of the washing machine, again which caused water damage to the floor.

As no previous tenant had a pet, the only damage could have been caused by the tenants' dog.

The landlord confirmed that the flooring has not been replaced.

*Tenant's response-*

The tenants denied that their dog caused damage to the floor and that the pee pads were outside the rental unit, not inside.

The tenants submitted that in letters to them, the landlord said that they would receive their deposits back and then decided to not return them. The tenants questioned why the landlord would not mention any of the issues when they were there and that she never mentioned any smells.

The tenants submitted that they did not cause water to leak from the washing machine, as they verbally told the landlords about the leak, as shown by text messages to the

landlord. The tenants said there was a drainage issue with the older washing machine, and the male landlord came down the next day. The tenants submitted that the male tenant here, who is a plumber, fixed the issue together with the male landlord.

*Cleaning-*

The landlord submitted that the tenants failed to properly clean the rental unit, which caused her to have to pay someone to clean prior to new tenants moving in.

*Tenants' response-*

The tenants submitted that they had the rental unit cleaned and if it was not clean, the landlord would have noticed when they returned the keys.

*Loss of rent revenue, September-*

The landlord said that she began advertising the rental unit on Facebook on August 16, 2019; however, on that same night, she noticed the damage.

The landlord submitted that she was unable to rent the suite for the month of September due to the smell and filth left by the tenants.

The landlord submitted further that they had a number of rental applications, but had to limit the applications to those who had not pets.

The landlord confirmed that the rental unit was re-rented for October 2019.

*Tenants' response-*

The tenant again denied causing damage to the flooring and said they left early in August in order for the landlord to be able to have plenty of time to find new tenants.

The tenants submitted that at one time the landlord said they were having her mom come to live in their suite, after they left, then she wanted to rent it out on Air B&B, then they decided to re-rent the suite, as she came down for showings. The tenants questioned why the landlord would not have noticed any damage or uncleanliness on those visits.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

*Tenants' application-*

Section 38 deals with the return of tenant's security deposits.

This section of the Act requires that the landlord must repay the tenant's security deposit or make an application claiming against the security deposit within 15 days of the later of the day the tenancy ends and the date the landlord receives the tenant's written forwarding address.

If a landlord fails to do either, the landlord may not make a claim against the tenant's security deposit and must pay the tenant double the amount of their security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on August 11, 2019, when the tenants vacated the rental unit; however, the tenants confirmed that they did not provide the landlords with their written forwarding address as required. I therefore will not grant the tenants double their security deposit and they have not claimed it.

Although I find the tenants are not entitled to double their security deposit, I find the tenants are entitled to a return of their security deposit of \$500.00, less any monetary award granted the landlords.

I also grant the tenants recovery of their filing fee of \$100.00.

*Landlords' application-*

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to prove their claim on a balance of probabilities.

Section 37 of the Act, in part, requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Under sections 23(3) and 35(3) of the Act, a landlord or agent must complete a condition inspection report in accordance with the regulations and the Act. The Act provides that the landlord and tenant inspect the rental unit together.

*Damage to flooring; cleaning-*

As to the landlord's claims against the tenants for damage to the flooring and cleaning, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, I find the landlords failed to comply with their obligation of conducting a move-in and move-out inspection.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the landlord's photographs taken at the end of the tenancy were of no probative value as there were no corresponding photographs from the beginning of the tenancy and as there was no proof of the dates the photographs were taken or if the tenants were present.

The landlords confirmed that the flooring has not been replaced as of the date of the hearing. After a subsequent set of tenants is now residing in the rental unit since this tenancy ended, I find there is no reasonable expectation that the landlords will ever incur a loss for flooring replacement.

I therefore dismiss their claim for flooring damage and cleaning.

*Loss of rent revenue, September-*

As I could not determine that the tenants caused damage to the flooring and as the landlords have rented the rental unit without replacing the flooring, I find they have submitted insufficient evidence to hold these tenants responsible for their claimed loss of rent revenue for September.

I therefore find the landlords have not met their burden of proof and I dismiss their claim for \$1,000.00.

Due to the above, I dismiss the landlords' application.

I do not grant the landlords recovery of their filing fee as I have dismissed their entire claim.

*Both applications-*

I have granted the tenants a monetary award of \$600.00, comprised of their security deposit of \$500.00 and their filing fee of \$100.00.

I have dismissed the landlords' application.

I therefore grant the tenants a monetary order for the amount of the monetary award of \$600.00.

Should the landlords fail to pay the tenants this amount without delay, the order may be served on the landlords to be enforceable and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application has been granted and they have been awarded a monetary order of \$600.00.

The landlords' application is dismissed.

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: December 19, 2019

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Residential Tenancy Branch