



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR / MNDL-S, MNRL, MNDCL, FFL

### Introduction

On November 17, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request an order for the Landlord to provide the balance of the security deposit.

On December 9, 2020, the Landlords submitted an Application for Dispute Resolution under the Act to request a Monetary Order for unpaid rent, for compensation and damages, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issues to be Decided

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 15, 2017 and continued as a month-to-month tenancy. The rent was \$1,705.00 and due on the first of each month. The Landlord collected a security deposit in the amount of \$800.00 and still holds \$132.87. The Tenants moved out of the rental unit on October 31, 2020.

The Tenants provided undisputed testimony that they provided their forwarding address to the Landlords on October 30, 2020, via email. The Tenants stated that they moved out of the rental unit on October 31, 2020 and were asked by the Landlord to attend on November 2, 2020 for a move-out inspection. The Tenants submitted a copy of the letter, dated October 29, 2020, which they provided to the Landlord, in person, on November 2, 2020. The letter contained a request for the return of the security deposit and provided the Tenants' forwarding address.

The Landlord testified that the Tenants broke the toilet seat. The Landlord submitted a picture of the cracked toilet seat and an invoice for a replacement seat. The Landlord calculated the cost of the toilet seat and one hour of labour and told the Tenants that it would be fair if they split the cost. The Landlord is claiming a loss of \$132.87.

The Landlord stated that the Tenants had indicated that they were going to move out of the rental unit on November 1, 2020, not October 31, 2020. The Landlord is requesting compensation for one days' rent in the amount of \$56.83.

The Landlord submitted that the Tenants did not provide proper notice to end the tenancy. The Landlord acknowledged that the Tenants emailed him on September 30, 2020 to advise that they would move out by November 1, 2020. The Landlord stated that a notice to end tenancy is very important and should be completed in writing. The Landlord stated that he was unable to find new tenants until December 1, 2020 and is requesting compensation for the rest of November 2020 rent, in the amount of \$1648.17.

The Tenants stated that they used the toilet seat normally and that it broke simply by sitting on it. The Tenants submitted reviews for the toilet seat that indicated other people had similar experiences with the toilet seat cracking. The Tenants stated that they rented the unit for three years and that the Landlord should expect some wear and tear.

The Tenants provided several examples of the Landlord using email and text to deal with various tenancy issues over the years of the tenancy. The Landlord used email to advise the Tenants of upcoming annual rent increases and texted them to provide 24-hour notice to enter the rental unit.

The Tenants testified and provided documentation that they spoke with the Landlord on October 1, 2020, the day after providing notice, and confirmed that they were moving out on October 31, 2020. The Tenant submitted emails between themselves and the Landlord throughout October 2020, which included the booking of the elevator for the move and confirming that the Tenants would be moving out of the rental unit on October 31, 2020. The Tenants take issue with the Landlord claiming that there was any confusion about when the Tenants were moving out.

The Tenants provided copies of emails that demonstrated the Landlord was actively showing the rental unit to prospective buyers and/or renters throughout October 2020.

### Analysis

Section 38 of the Act states that the landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

I accept the Tenants' undisputed testimony and evidence that they requested their security deposit and notified the Landlords of their forwarding address on November 2, 2020, in accordance with Sections 88 and 90 of the Act.

I have no evidence before me that the Landlords returned the balance of the security deposit, reached written agreement with the Tenants to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit within fifteen days of receiving the Tenants' forwarding address. For these reasons, I

find the Landlords must reimburse the Tenants double the amount of the outstanding security deposit for a total of \$265.74 (\$132.87 x 2), pursuant to Section 38 of the Act.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlords submitted a picture of a broken toilet seat and an invoice for the cost of the seat. The Landlord provided undisputed testimony that the toilet seat broke during the tenancy; however, I find that the Landlord failed to provide sufficient evidence that the damage occurred as a result of the Tenants' violation of the Tenancy Agreement or the Act. I accept the Tenant's testimony and evidence that the toilet seat cracked under normal use and that the damage occurred naturally from normal wear and tear. As such, I dismiss this part of the Landlords' claim.

The Landlord testified that the Tenants moved out of the unit on October 31, 2020. The Tenants provided undisputed correspondence between themselves and the Landlord that confirmed the Tenants were going to and did move out on October 31, 2020. For these reasons, I find that the Landlords failed to prove that the Tenants moved out on November 1, 2020 or that they had possession of the rental unit on November 1, 2020. I dismiss the Landlords' claim for one day of unpaid rent.

The Tenants provided undisputed evidence that they regularly used email to correspond with the Landlords about tenancy issues. I agree with the Landlord that a notice to end tenancy is important and should be in writing; however, I also accept that the Landlords regularly used email to correspond with the Tenants about important issues such as raising the Tenants' rent and giving notice to enter the rental unit. As such, I find that both parties had established email as an acceptable means of service under the tenancy.

I accept the Tenants' testimony that they followed-up with the Landlords, both on the phone and in emails, about the end of tenancy and confirmed the date they were going to move out of the rental unit; that being October 31, 2020. I have no evidence before me to demonstrate that the Landlords had any concerns, prior to the end of the tenancy,

about the way the Tenants gave notice to end their tenancy. As such, I find the Landlords had one months' notice from the Tenants, pursuant to the Act. Based on this, I find the Landlords have failed to provide sufficient evidence that they lost a months' rent as a result of the Tenants' breach of the Tenancy Agreement or the Act. I dismiss the Landlords' claim for the loss of rent for November 2020.

I find that the Landlords' application was unsuccessful and do not award compensation for the filing fee.

I order the Landlords to return the doubled balance of the security deposit, via registered mail, to the Tenants within 15 days of receiving this Decision.

### Conclusion

I dismiss the Landlords' application in its entirety without leave to reapply.

I grant the Tenants a Monetary Order for the amount of \$265.74, in accordance with section 38 of the Act. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims 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: February 09, 2021

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Residential Tenancy Branch