



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MNDL-S MNDCL-S FFL  
For the tenants: MNSDS-DR FFT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$1,182.00 for damage to the unit, site or property, for compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants originally applied through the Direct Request Process for a monetary claim of \$1,630.00 for the return of their security deposit, plus the return of \$880.00 in rent for January 11-31, 2021 rent, plus the filing fee. An Interim Decision dated April 19, 2021 was issued by an adjudicator, which resulted in the Direct Request Proceeding being adjourned to this participatory hearing and was also joined with the landlord's application to be heard together as one hearing.

On September 7, 2021, the tenants and the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

As both parties confirmed having been served with an application including supporting documentary evidence, and that they had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act. I have reviewed all 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

### Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one-year fixed-term tenancy began on June 1, 2019 and reverted to a month-to-month tenancy after June 1, 2020. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy, which will be addressed in detail later in this decision. The parties agree that the tenants vacated the rental unit on January 10, 2021.

### Landlord's application

The landlord is claiming \$1,182.00, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Suite cleaning	\$250.00
2. Penalty for early termination of tenancy agreement	\$600.00
3. Rent for February 1-5, 2021 inclusive	\$232.00
4. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,182.00</b>

Regarding item 1, the landlord has claimed \$250.00 for the cost to clean the rental unit that the landlord claims the tenants failed to leave reasonably clean. The landlord confirmed that they did not complete an incoming or outgoing Condition Inspection Report in writing, which I will address later in this decision.

The landlord agent stated that the landlord and another person spent 8 hours cleaning the rental unit and that \$250.00 divided by 16 hours (8 hours x 2 people) is \$15.62, which about minimum wage. The landlord presented a total of four colour photos, which I will address later in this decision. The landlord claims the colour photos show a dirty rental unit and are photos of the toilet, bathtub and shower, stove, counter and kitchen floor, and a close up of a floor corner.

The tenants testified that they did clean the rental unit and that the landlord advised them that it was “clean”, which the landlord denied saying during the hearing. The tenants then presented a document from a cab company, which the tenants later admitted did not prove that they were at the rental unit cleaning, and which I afford no weight as a result and will not address further in this decision.

The tenants stated that the landlord attempted to return on January 25, 2021, the following amounts, \$200.00 to the BW and \$217.86 to AS. BW testified that they rejected the \$200.00 e-transfer, and AS testified that due to the \$217.86 being auto-deposited into their account, the tenant returned \$217.86 to the landlord as AS did not agree to any deductions from their security deposit.

Regarding item 2, the landlord has claimed \$600.00 as a penalty provision set out in the Addendum to the Tenancy Agreement, which states the following:

2. The Term of this agreement shall be a Twelve months tenancy that shall begin on June 01<sup>st</sup> 2019. One month's notice is required for either party to terminate this agreement. Both agree has \$600.00 penalty for the early Agreement cancelling fee.

[Reproduced as written]

Page 2 of the tenancy agreement also reads as follows:

**2. LENGTH OF TENANCY** (please fill in the dates and times in the spaces provided)

This tenancy starts on: 01 June 2019  
day month year

**Length of tenancy:** (please check a, b or c and provide additional information as requested)  
 This tenancy is:

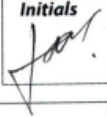
☐ a) on a month-to-month basis

☒ b) for a fixed length of time: 1 YEAR length of time ending on: 01 June 2020  
day month year

**At the end of this fixed length of time:** (please check one option, i or ii)

☒ i) the tenancy may continue on a month-to-month basis or another fixed length of time

☐ ii) the tenancy ends and the tenant must move out of the residential unit  
 If you choose this option, both the landlord and tenant must initial in the boxes to the right.

**Landlord's  
Initials**  


**Tenant's  
Initials**  
 A.S.  
 N.F.

☐ c) other periodic tenancy as indicated below:  
☐ weekly ☐ bi-weekly ☐ other:

Given the above, I find the tenancy reverted to a month-to-month as of June 1, 2020. The tenants submitted a copy of the following Mutual Agreement to End a Tenancy document that the parties both agreed was dated January 5, 2021 (Mutual Agreement) and was signed by both tenants and the landlord. The Mutual Agreement lists the end of tenancy date as January 10, 2021 at 5 pm. The Mutual Agreement also contains the following language highlighted in yellow as follows:

#RTB - 8

**This form is not a notice to end tenancy.** Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served with a notice to end tenancy. If you have questions about your rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act, contact the Residential Tenancy Branch by using the contact information at the bottom of this form.

THIS IS A MUTUAL AGREEMENT

Sentences 3 and 4 read as follows: "By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to your if you were to be served with a notice to end tenancy."

The landlord testified that they were not aware that by signing the Mutual Agreement, that they could be impacting their ability to claim for \$600.00 for less than one months' notice by the tenants, which I will address later in this decision.

Regarding item 3, the landlord has claimed \$232.00 for loss of rent from February 1-5, 2021, inclusive. The landlord stated that they arrived at the amount of \$232.00 by using January 5, 2021, the date the Mutual Agreement was signed as the date the tenants provided their written notice they were vacating, and the landlord is seeking the first 5 days of February 2021, to make it one full month from the January 5, 2021 date and as a result, are claiming \$232.00 for loss of February 5, 2021 rent.

The tenants stated that they are relying on the signed Mutual Agreement that the parties signed and feel that they are not responsible for February 2021 rent and presented a second agreement dated January 5, 2021 and entitled End of tenancy – Written Agreement (Written Agreement), which states in part:

This agreement states that as discussed between AS (tenants 1), BW (tenant 2) and the landlord, TM, that the cost of rent for the unit [address of rental unit] will be returned to both tenants for the month of January 2021, along with the security deposits.

The total amount returned to each tenant

1. AS = \$406 + \$325 = \$731
2. BW = \$474 + \$325 = \$799

....

Termination of the lease due to hazardous mold in the unit, considered as an Emergency Repair as per the BC Tenancy Act. Therefore, the landlord, TM, participated with both tenants (AS, BW) in a mutual agreement to terminate tenancy, post inspection of the unit.

The following signatures acknowledge agreement to all statements mentioned above and intend an immediate return of the amount as mentioned within 15 days of vacancy as per the BC Tenancy Act...

[Reproduced as written except for anonymizing personal information]

Both parties confirmed that the amounts listed above as follows were corrected from earlier amounts and the parties agreed on the following payment by the landlord to the tenants:

1. AS = \$406 + \$325 = \$731
2. BW = \$474 + \$325 = \$799

The tenants stated that the landlord did not comply with this agreement, which will be addressed in the tenants' application below.

The landlord stated that they were not aware that signing the Mutual Agreement and the Written Agreement was a final amount and did not understand what they were signing. The tenants vehemently disagreed and stated that they had their phone out with a calculator and that the amounts were changed as a negotiation between the parties and that the amount listed directly above were the final amounts agreed to be paid by the landlord to the tenants.

I will address the filing fee for both parties later in this decision.

Tenants' application

The tenants have claimed \$1,630.00, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent returned for January 11-31, 2021 inclusive	\$880.00
2. Damage deposit	\$650.00
3. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,630.00</b>

Regarding item 1, and as mentioned above, the tenants and the landlord signed a Written Agreement dated January 5, 2021, where the landlord agreed to pay the tenants as follows:

1. AS = \$406 + \$325 = \$731
2. BW = \$474 + \$325 = \$799

Those total amounts would be \$731.00 plus \$799.00 for a total amount of \$1,530.00. The tenants clarified that the amount due to both tenants was arrived at by taking the daily rent amount for January 2021 and using the 21 days (January 11-31, 2021 inclusive). The tenants explained that AS paid \$600.00 towards January 2021 rent to the landlord, while BW paid \$700.00 towards January 2021 rent to the landlord, however I will address the calculations between the parties later in this decision.

Regarding item 2, the tenants confirmed that they were not waiving any rights under the Act to the doubling of their security deposit under the Act if they were so entitled. The tenants stated that they provided their written forwarding address on RTB Form#47,



titled "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit" dated January 26, 2021 (Written Forwarding Address). The tenants affirmed that they served their Written Forwarding Address in the landlord's mailbox on January 26, 2021 after ringing the electronic "smart" doorbell at the landlord's residence. The agent testified that the landlord answered their electronic doorbell via their cell phone as the landlord was not at home at the time the tenants rang the doorbell. The tenants stated that they advised the landlord of what was in the package being placed in the landlord's mailbox. The landlord stated that upon arriving home, there was no package left by the tenants in the mailbox.

As a result, the tenants called witness S-AC (witness). The witness was affirmed and stated the following was discussed with Q representing questions being asked of the witness and the answers represented with A.

Q: Were you with the tenant when they dropped off paperwork?

A: Yes.

Q: Where?

A: In Burnaby on January 26 (2021) and it was paperwork for the dispute.

Q: What was said?

A: It related to a dispute and paperwork was left in the mailbox.

[Witness excused]

### Analysis

Based on the documentary evidence, the testimony of the parties and the witness, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and their claim fails.

### **Landlord's claim**

**Item 1** - Regarding item 1, the landlord has claimed \$250.00 for the cost to clean the rental unit. Section 23 and 35 of the Act require the landlord to complete both an incoming and outgoing Condition Inspection Report at the start and at the end of the tenancy, which the landlord failed to do. As a result, I find the landlord breached sections 23 and 35 of the Act by failing to do a written incoming and outgoing Condition Inspection Report with the tenants as required by the Act. **I caution** the landlord not to breach sections 23 and 35 of the Act in the future.

I find the photo evidence does not support that the rental unit was left in an unreasonably clean condition. In fact, section 37(2)(a) of the Act applies and states:

#### **Leaving the rental unit at the end of a tenancy**

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, ...  
[Emphasis added]

Based on the photo evidence before me, I find the landlord claiming they spent a total of 16 hours cleaning the rental unit that the landlord's standard of clean far exceeds what I find to have been reasonably clean as shown in the landlord's photos. Therefore, I find the landlord has failed to meet the burden of proof and I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 2** – The landlord has claimed \$600.00 as a penalty provision set out in the Addendum to the Tenancy Agreement, which I find is not enforceable given that the landlord agreed in writing by way of the Mutual Agreement and Written Agreement to allow the tenants to end their tenancy and did not account for \$600.00 in what I find to have been a binding financial agreement to end the tenancy. As a result, I find the landlord has failed to meet the burden of proof and dismiss this item due to insufficient evidence, without leave to reapply.



**Item 3** – While the landlord has claimed \$232.00 for loss of rent from February 1-5, 2021, inclusive, I disagree with the landlord that the tenants breached the Act by failing to give 1 Months' Notice based on the signed Mutual Agreement and Written Agreement. As a result, I find the landlord is not entitled to rental loss in any amount given the signed Mutual Agreement and Written Agreement which I find are binding between the parties. Therefore, I dismiss this item due to insufficient evidence, without leave to reapply as the landlord has failed to meet the burden of proof.

### **Tenants' claim**

**Item 1** – As mentioned above, I find the Mutual Agreement and Written Agreement between the parties is enforceable and accept that the tenants have not been reimbursed the rent to be returned for the period including January 11-31, 2021. Although the parties agreed to the following amounts to be returned:

1. AS = \$406 + \$325 = \$731
2. BW = \$474 + \$325 = \$799

I find the daily rental rate for January 2021 to be \$41.94 which is \$1,300.00 divided by 31 days. January 11-31, 2021 is a total of 21 days, so 21 days multiplied by the \$41.94 daily rental rate equals \$880.74 and the amount above being \$406 plus \$474 equals \$880.00 so will not make an amount higher than \$880.00 as I consider the amount agreed upon by the parties to be close enough as it is only 74 cents off. Based on the signed agreement of the parties, which I find is an enforceable contract, I award the tenants **\$880.00** as agreed upon in writing.

**Item 2** – As the tenants confirmed that they were not waiving any rights under the Act to the doubling of their security deposit under the Act if they were so entitled, I find the landlord was more likely than not served on January 26, 2021 with the tenants' written forwarding address in the mailbox of the landlord, as I find the witness testimony to be compelling, and of which I afford significant weight.

I also find that the landlord attempted to pay the tenants via e-transfer the total amount of \$417.86 on January 25, 2021, which they either didn't accept or returned to the landlord. In addition, the landlord did not file their claim claiming towards the security deposit until April 7, 2021, which is beyond 15 days of the January 29, 2021 date when I find the landlord was served with the tenants' written forwarding address, as documents placed in the mailbox are deemed served 3 days after they are mailed pursuant to section 90 of the Act. Therefore section 38(1) and 38(6) of the Act apply and state:

**Return of security deposit and pet damage deposit**

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

Given the above, I must double the amount that was not returned to the tenants. Therefore, \$650.00 minus the \$417.86 amount attempted to be returned by the landlord within 15 days of January 29, 2021 equals \$232.14. I find the landlord owes the tenants double \$232.14, which equals \$464.28 plus the \$650.00 security deposit for a total owing with penalty to the tenants of **\$1,114.28** as I find the tenants have met the burden of proof for a portion of their claim.

**I caution** the landlord that a security deposit is held in trust for the tenants by the landlord. At no time can the landlord simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, the landlord did not have any authority under the Act to keep any portion of the security deposit and has been found to have received the written forwarding address 3 days after January 26, 2021, which is January 29, 2021 pursuant to section 90 of the Act.

As the tenants' application had merit, I grant the tenants the recovery of their filing fee in the amount of **\$100.00**.

As the landlord's application did not have merit, I do not grant the landlord the recovery of the filing fee.

I find the tenants have established a total monetary claim in the amount of **\$2,094.28** comprised of \$880.00 for item 1, \$1,114.28 for item 2, plus the \$100 filing fee. Based on the above, **I grant** the tenants a monetary order pursuant to section 67 of the Act, in the amount of **\$2,094.28**.

### Conclusion

The landlord's claim is unsuccessful and is dismissed without leave to reapply.

The tenants' application is mostly successful.

The tenants have been granted a monetary order pursuant to section 67 of the Act, in the amount of \$2,094.28. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord is reminded that they can be held liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 10, 2021

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Residential Tenancy Branch