



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL  
                              MNSD, MNSCT, MNETC, FFT

### Introduction

This hearing dealt with the adjourned Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on February 9, 2021 and amended on April 30, 2021. The Landlords applied for a monetary order compensation for damage caused by the tenant, their pets or guests to the unit, site, or property, for a monetary order compensation for my monetary loss or other money owed, permission to retain the security deposit and to recover their filing fee.

The Tenants’ Application for Dispute Resolution was made on April 30, 2021. The Tenants applied for the return of their security deposit, for a monetary order for compensation for my monetary loss or other money owed, for a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property and the return of their filing fee.

Both the Landlords, and the Landlord’s Agent (the “Landlords”) as well as both Tenants the Tenant’s Advocate (the “Tenants”) attended the hearing and were each and were reminded that the affirmation they provided on August 26, 2021, carried forward to today’s proceedings. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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.

### Issues to be Decided

- Are the Landlord entitled to a monetary order for damages due to the tenancy?
- Are the Landlord entitled to a monetary order for compensation for my monetary loss or other money owed?
- Are the Landlord entitled to retain the security deposit?
- Are the Landlord entitled to the return for their filing fee for this application?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to monetary order for compensation for my monetary loss or other money owed?
- Are the Tenants entitled to monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property?
- Are the Tenants entitled to the return for their filing fee for this application?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that this tenancy began on February 1, 2018, as a one-year and fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. By the end of this tenancy, rent in the amount of \$2,313.00 was to be paid by the first day of each month, and the Landlord had been given a \$1,100.00 security deposit at the outset of the tenancy. Both parties submitted a copy of the tenancy agreement and move-in inspection report into documentary evidence.

The parties agreed that the Landlords issued a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on November 26, 2020. The Landlords testified that one of them would be moving into the rental unit, as their son was moving to this country and would be living in their home with the other Landlord. Both parties submitted a copy of the Notice into documentary evidence.

The Landlords and Tenants agreed that this tenancy ended on January 31, 2021, in accordance with the Notice, that the move-out inspection had been completed on January 31, 2021, in the presence of both these parties, and the Tenants had provided

their forwarding address to the Landlords. The Landlord submitted a copy of the move-out inspection report into documentary evidence.

The Tenants testified that they are claiming for \$27,756.00 in compensation, the additional 12-months of compensation available under section 51 of the *Act*, as the Landlords did not use the rental unit for the stated purpose within a reasonable amount of time after the Tenancy ended. The Tenants testified that the one of the Landlords did not move into the rental unit until the end of May 2021 and that over 100 days to move in was an unreasonable delay.

The Landlords testified that they had planned to move into the rental unit on February 1, 2021, but that they delayed their move unit on May 22, 2021. The Landlords testified that they were able to delay their move to the rental unit as their son's move to Canada was delayed, which allowed them to delay their move. The Landlords testified that they should be excused from having to pay the additional 12-months of compensation as their move was delayed due to the Covid-19 pandemic and their concerns regarding exposure during the move. The Landlords testified that they delayed their move until May 2021, when they were able to get vaccinated and reduce their covid-19 risks.

The Tenants testified that they are also claiming for \$5923.00 in compensation due to the Landlord not repairing the rental unit during the tenancy. The Tenants testified that they sent a text message to the Landlord regarding two required repairs, one to the toilets of the rental unit, as they were constantly running, and one to request repairs to the door seals, as they were old and letting in cold air. The Tenants testified that they reported water running in the toilets of the rental unit by text message on October 28, 2020, and that they had reported the need for the door seal repair in May 2020 by text message. The Tenants testified that the Landlords refused to repair toilets and the doors throughout their tenancy and that even though they spoke to them many times about the needed repairs, these repairs were never made.

The Landlords testified that they responded to every request for repairs they received from the Tenants. The Landlords testified that they had a professional plumber attend the rental unit and that there were no problems found with the toilets, and that the door seal was not reported to them until late November 2020, but that when they contacted the Tenants to arrange a time to make the requested repairs the Tenants refused them access the rental unit, stating that the repairs could wait until the tenancy was over.

When asked, the Tenants testified that they had never sent a written request for repairs to the Landlords for either the toilets or the doors and confirmed that as of December 1, 2020, they refused to allow the Landlords access to the rental unit to make repairs.

The Landlords testified that they are claiming for the recovery of their costs for plumbing inspection due to a reported water leak coming from the rental unit. The Landlords testified the strata contacted them on November 15, 2020, stating that a water leak had been reported in the unit below the rental unit and that it was believed that this water was coming from their unit. The Landlords testified that they had a plumber attend the rental unit and the plumber reported that the water leak had come from this rental unit and that the leak was caused by misuse of a toilet. The Landlords are requesting to recover the costs of \$303.45 for the leak inspection. The Landlords submitted a copy of the plumber inspection report and invoice into documentary evidence.

The Tenants testified that they did not misuse the toilet during their tenancy, that the toilet had a water leak that they had reported to the Landlord and the Landlord had refused to make repairs.

The Landlord testified that they are seeking to recover their costs to have the rental unit painted at the end of the tenancy in the amount of \$1,507.80. The Landlords testified that the Tenants returned the rental unit to them with excessive marks and damage to the walls at the end of tenancy and that due to this damage, they had to have the rental unit repainted. The Landlords submitted a copy of the invoice for painting and 22 pictures into documentary evidence. When asked, the Landlord's testified that the last time the rental unit had been painted was November 2017.

The Tenants testified that they did not damage the walls of the rental unit, they agreed that there were some nail holes but that this was only normal wear and tear, and that they should not be responsible for new paint throughout the entire rental unit.

The Landlord testified that they are seeking to recover their costs to have the doors cleaned at the end of the tenancy in the amount of \$126.00. The Landlords testified that the Tenants returned the rental unit to them with scuff marks on all the doors and that they had to hire someone to come in and clean them at the end of the tenancy. The Landlords submitted a copy of the invoice for cleaning and 11 pictures into documentary evidence. When asked, the Landlord's testified that the last time the door of the rental unit had been painted was November 2017.

The Tenants testified that they cleaned was doors of the rental unit before they moved out and agreed that there were some marks that would not come off but that it was due to old paint.

The Landlord testified that they are seeking to recover their costs to replace the range at the end of the tenancy in the amount of \$811.71. The Landlords testified that the Tenants returned the rental unit to them with scratches on the range top. The Landlords testified that it was cheaper to replace the entire range and not just the glass range top, so they opted for a new range instead of the repair. The Landlords submitted a copy of a quote to repair, an invoice for the new range and two pictures into documentary evidence. When asked, the Landlords testified that they did not know how old the range was at the end of this tenancy.

The Tenants testified that the range worked perfectly at the end of the tenancy and that there was no need to buy a new range. The Tenants testified that the scratches were just normal wear and tear and that they should not be responsible for buying the Landlords a new stove.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement signed between these parties, and I find that the parties entered into a one-year fixed term tenancy, beginning on February 1, 2018, that rolled into a month-to-month tenancy at the end of the initial fixed term, in accordance with the *Act*.

I accept the agreed-upon testimony of these parties that the Landlords served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated November 26, 2020. The Notice indicated that the Tenants were required to vacate the rental unit as of January 31, 2021. The reason checked off by the Landlord within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*
  - *The Landlord or the landlord's spouse*

I accept the agreed-upon testimony of these parties that this tenancy ended in accordance with the Landlord's Notice on January 31, 2021, and that the move-out inspection was completed on this same day in the presence of the Landlords and the Tenants. I also accept the agreed-upon testimony of these parties that the monthly rent at the end of tenancy was \$2,313.00 and that the Landlord's are continuing to hold the \$1,100.00 security deposit for this tenancy pending the results of their claim in these proceedings.

The Landlords have claimed for \$2,748.96 in compensation and the recovery of their costs and losses due to this tenancy, consisting of \$1,507.80 at the end of tenancy painting, \$126.00 cleaning in end of tenancy cleaning, \$811.71 to replace a damaged range and \$303.45 for a leak inspection. awards for compensation due to damage or loss are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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."

In order for me to determine if the Landlords are entitled to their requested compensation, I must first determine if the Tenants breached the *Act* during the tenancy. I will address the Landlords' claims for \$1,507.80 for painting and \$126.00 for

cleaning first. Section 37(2) of the Act states the following regarding the conditional of the rental unit at the end of a tenancy:

***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, 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.*

I have reviewed the testimony offered by these parties during these proceedings, and I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the doors and the condition of the walls of the rental unit at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; on this point, it is the Landlord who holds the burden of proof.

I have reviewed the move-in/move-out inspection report (the “inspection report”) as the inspection report is the official document that represents the condition of the rental unit at the beginning and the end of a tenancy. However, in this case, I noted that the Tenants had indicated on this document that they did not agree that the document accurately reflected the condition of the rental unit at the end of the tenancy.

As it has already been determined that this document does not provide an agreed-upon account of the rental unit at the end of this tenancy, I must turn to the remaining documentary evidence submitted by these parties to determine the condition of the rental unit at the end of this tenancy. I have reviewed the 22 pictures of the walls and 11 pictures of the doors of the rental unit submitted into documentary evidence, and I find that these pictures show a rental unit with several years of normal wear and tear in need of a fresh coat of paint.

After reviewing the Landlords documentary evidence, I find that the Tenants were in compliance with section 37(2) of the Act when they returned this rental unit to the Landlord in a reasonably clean state, with a reasonable amount of wear and tear at the end of this tenancy. Therefore, I dismiss the Landlords’ claims for \$1,507.80 in painting and \$126.00 in cleaning at the end of tenancy.

The Landlords have also claimed for \$811.71 to replace a damaged range; again, the parties, in this case, offered conflicting verbal testimony regarding the condition of the range at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; on this point, it is the Landlord who holds the burden of proof.

I have reviewed the 1 picture of the range taken at the end of tenancy and compared this picture to the picture of the range taken at the beginning of this tenancy, that had been submitted into documentary evidence by the Landlord, and I find that these pictures show a scratched but functioning range.

After reviewing the Landlords picture evidence, I find that the Tenants were in breach of section 37(2) of the *Act* when they returned this rental unit to the Landlords with a scratched range top. I have also reviewed the Landlord's documentary evidence consisting of the estimate to repair and the replacement invoice and find the Landlords have proven the value of their loss and that they took appropriate steps to minimize their loss due to the Tenants' breach of the *Act*.

In order to determine the appropriate award for this loss, I must also take into account the age of this appliance and the life expectancy of this item. I refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements; the guideline sets the useful life of this appliance at 15 years. I have reviewed the Landlords testimony and evidence and note that they were unable to testify to the age of the damaged range during these proceedings. In the absence of an accurate account of the age of this item, or evidence to show that the range was new at the beginning of this tenancy, I find that the Landlords are not entitled to the full replacement value of the range that they are requesting.

However, as it has been determined that the Tenants did the damage to this item during their tenancy, I find that the Landlords are entitled to a nominal award due to this damage. Therefore, I award the Landlords the amount of \$200.00, as a nominal award for the scratched range top.

Finally, the Landlords are claiming for \$303.45 to recover their cost of a water leak inspection in the rental unit. I have reviewed the Landlords testimony of this point of their claim, and I noted that the leak had been reported to the Landlord due to a



complaint of a water leak in the unit below this rental unit. I have also reviewed the plumber's report, which provided their professional opinion that the leak was caused by misuse. I accept the professional opinion of the plumber and find that the actions of these Tenants caused the water leak that resulted in the need for this \$303.45 plumbing inspection, and that the Landlords' have provided sufficient proof of the amount claimed. Therefore, I award the Landlords' the recovery of their costs for this inspection in the amount of \$303.45.

Overall, I award the Landlord \$503.45, consisting of \$200.00 in a nominal award for a scratched range top and \$303.45 for a plumbing inspection. I grant the Landlord permission to retain \$503.45 from the security deposit they are holding for this tenancy in full satisfaction of the amount awarded to them in this decision.

I order the Landlords to return the remaining \$596.55 of the security deposit that they are holding for this tenancy to the Tenants within 15 days of receiving this decision.

As for the Tenants application, the Tenants have claimed for \$5,923.00 in compensation due to repairs not being completed in a timely manner and \$27,756.00 in compensation related to a Notice to End Tenancy for Landlord's Use of Property. I will address the Tenants' claim for \$5,923.00 in compensation due to repairs not being completed first.

Section 32 of the Act states the following regarding repairs:

***Landlord and tenant obligations to repair and maintain***

*32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

*(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

I have reviewed the testimony and the documentary evidence submitted by both parties on this point, and I find that the Landlords responded in a timely manner to all reports from the Tenants of required repairs to the rental unit throughout this tenancy. As the Tenants have failed to provide sufficient evidence to show that the Landlord breached section 32 of the *Act*, during this tenancy, I must dismiss their claim on this point in its entirety.

As for the Tenants claim for \$27,756.00 in compensation related to a Notice to End Tenancy for Landlord's Use of Property. In this case, the Tenants have claimed for the additional 12-months of compensation available under section 51 of the *Act*, claiming that the Landlords did not use the rental unit for the stated purpose within a reasonable amount of time. Section 51(2) of the *Act* states the following:

***Tenant's compensation: section 49 notice***

***51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if***

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I accept the Landlords' testimony that they did not use the rental unit for the stated purpose until May 22, 2021, 111 days after the end of tenancy date indicated on their Notice. I find this to be an unreasonable delay in the use of this property by the Landlords for their stated purpose on the Notice.

The Landlords testified that they did not move into the rental unit right away as their son's arrival in Canada had been delayed, and they preferred to wait until they were vaccinated to move, so their sons delayed arrival provided them extra time to move.

The Landlords argued that they should be excused from paying the additional 12-months of compensation due to the covid-19 pandemic.

Section 51 (3) of the Act states the following:

***Tenant's compensation: section 49 notice***

**51 (3)** *The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

The global Covid-19 pandemic was declared in Canada on March 11, 2020, 261 days before the Landlord chose to issue the Notice to end tenancy for their personal use of the rental unit. As the pandemic had been ongoing for over 200 days before the Landlord chose to end this tenancy, I find that the pandemic itself could not have the exceptional circumstance that prevented the Landlord from moving into the rental unit in a timely manner as required.

As for the Landlords' claim that they wanted to wait until they got vaccinated before they moved, again the Landlord issued their notice to end tenancy two weeks before the first vaccine had been approved for use in this country and over three months before this province started its mass vaccine rollout. I find that if getting vaccinated before they moved was important to the Landlord, then it would have been reasonable for them to wait until a vaccine had at least been approved before they issued this notice to end tenancy, or better still, wait until the Provincial Government had announced their vaccine rollout plan.

Additionally, I find the excuse of the Landlord's son's delayed arrival into this country to be insufficient cause to have created an extenuating circumstance that would have granted the Landlords more time to move into this rental unit, as they had declared to be their intent on their Notice. I find that there was nothing exceptional or extenuating in

the Landlords' explanation of their son's delayed arrival that could have negatively impacted the Landlord's ability to move.

Overall, even though a global pandemic is an exceptional and unusual time in our society, I find that the pandemic was not only ongoing at the time the Landlords issued this Notice, but that it ought to have been easily anticipated that it would continue until vaccines were approved and administered. Therefore, I find that it was not out of the control of these Landlords as to when they moved into the rental unit, nor have they proven an extenuating circumstances.

Consequently, pursuant to section 51(2) of the *Act*, I find that the Landlords did not use the rental unit for the stated purpose on their Notice within a reasonable amount of time. Therefore, I find that the Tenants have met the onus of proving her claim under section 51(2) of the *Act*, and I award the Tenants compensation in the amount of \$27,756.00, which is the equivalent of twelve times the monthly rent payable under the tenancy agreement when this tenancy ended.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution; in this case, both the Landlords and the Tenants have applied to recover their respective filing fees. As the Tenants have been the more successful party to these proceedings, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application.

I find that the Landlords are not entitled to recover the filing fee paid for their application.

I grant the Tenants a monetary order of \$28,452.55, consisting of \$27,756.00 in compensation, \$596.55 in the recovery of their security deposit for this tenancy and \$100.00 in the recovery of the filing fee for this hearing.

Conclusion

I award the Landlords \$503.45, and I grant the Landlords permission to retain \$503.45 from the security deposit they are holding for this tenancy in full satisfaction of this award.

I order the Landlords to return the remaining \$596.55 of the security deposit that they are holding for this tenancy to the Tenants within 15 days of receiving this decision.

I grant the Tenants a **Monetary Order** in the amount of **\$28,452.55**. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: December 17, 2021

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Residential Tenancy Branch