



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: MNDL-S, MNRL, MNDCL, FFL  
                             TT: MNDCT, MNSD, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on August 8, 2021 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent and utilities;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on October 26, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for compensation;
- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Landlords’ witness M.A., as well as the Tenant and the Tenant’s Advocates M.B. and A.T. attended the original hearing at the appointed date and time. The parties confirmed service and receipt of their respective Applications and documentary evidence packages. As such, I find that above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The original hearing was held on February 22, 2022, however, ran out of time which required the original hearing to be adjourned. The hearing reconvened on June 2, 2022 at 11:00AM. Both parties were in attendance for the reconvened hearing.

### Preliminary Matters

The Landlords submitted several claims for compensation relating to damage, unpaid rent and unpaid utilities. At the start of the hearing, the Landlords indicated that they had not provided a monetary order worksheet containing the list of each monetary claim they were making relating to damage. The Landlords stated that they provided receipts for each claim instead. The Tenant confirmed he was unsure as the details of the Landlords' monetary claims.

According to Section 59 (2) An application for dispute resolution must;

(a) be in the applicable approved form,  
(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings**, and

(c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

(5) **The director may refuse to accept an application for dispute resolution if**

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

(b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or

**(c) the application does not comply with subsection (2).**

I find that proceeding with the Landlords' monetary claims for damage at this hearing would be prejudicial to the Tenant, as the absence of particulars that set out how the Landlords arrived to the monetary amount they are claiming makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the Landlord's claim. The Landlords failed to specify a detailed breakdown of their monetary claim including the amount of each item and what each item being claimed represents.

For this reason, the Landlords elected to withdraw their monetary claims for damage with the ability to reapply. The Landlords are reminded to provide a detailed breakdown of her monetary claim and is encouraged to use the Monetary Worksheet available at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) when submitting a monetary claim. The Landlords wished to proceed with their claims for unpaid rent and utilities which were clear and concise.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Are the Landlords entitled to retain the Tenants security deposit pursuant to Section 38 of the *Act*?
4. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
5. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
6. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified and agreed to the following: the tenancy began on September 15, 2013. Near the end of the tenancy, rent in the amount of \$1,900.00 per month was due on the first day of each month. The parties also agreed that the Tenant was required to pay 50% of the utility bills to the Landlords. The Tenant paid a security deposit of \$700.00 which the Landlords continue to hold. The parties agreed that the Tenant vacated the rental unit on June 30, 2021 and completed the move out inspection, returning the keys on July 2, 2021. The Landlords stated that they received the Tenant's forwarding address on July 2, 2021 during the move out inspection.

The Landlords' Claim

The Landlords are claiming \$1,900.00 in relation to the loss of rent for July 2021. The parties agreed that the Landlords served the Tenant with a One Month Notice for Cause. The parties agreed that they came together on May 12, 2021 and mutually agreed that the One Month Notice would be cancelled in lieu of signing a Mutual Agreement to End Tenancy with an effective date of July 31, 2021. The Landlords provided a copy of the Mutual Agreement to End Tenancy which was signed by both parties.

The Landlords stated that the Tenant phoned the Landlords on June 17, 2021 stating that they had found another accommodation and would be vacating the rental unit on

June 30, 2021 instead of the mutually agreed date of July 31, 2021. The Landlords stated that they were unable to re-rent the rental unit for July 2021 and suffered a loss of rent in the amount of \$1,900.00 as a result.

The Tenant stated that he notified the Landlords on June 3, 2021 that he would be moving out of the rental unit on June 30, 2021. The Tenant stated that the Landlords were motivated to end the tenancy in an attempt to raise the rent. Furthermore, the Tenant stated that the Landlords had advertised the rental unit for rent in June 2021 with a move in date for August 1, 2021, therefore, not mitigating their loss. The Tenant provided a copy of the rental advertisements in support.

The Landlords are also claiming for unpaid utilities. During the hearing, the parties agreed that the Tenant owes the Landlords \$465.00 for unpaid Hydro and Fortis Bill. The Landlords are also claiming \$2,271.03 in relation to unpaid sewer bills over the entire duration of the tenancy. The parties agreed that the Tenant was responsible for paying 50% of the utilities to the Landlords. The tenancy agreement was provided in support of this arrangement.

The Tenant stated that he has not seen a sewer bill during the tenancy, nor have the Landlords requested the Tenant to pay 50% of the sewer bill until the Landlord served the Tenant with a Notice to End Tenancy on May 2, 2021. The Tenant stated that no sewer bills have been provided to him by the Landlords. The Landlord provided a hand written account of the sewer bills in support of their claim.

### The Tenant's Claim

The Tenant is claiming the return of his security deposit in the amount of \$700.00. The parties confirmed that the tenancy ended on July 2, 2021 and the Landlords confirmed receipt of the Tenant's forwarding address on July 2, 2021 during to move out condition inspection of the rental unit. I note that the Landlords' submitted their Application on August 8, 2021 claiming to retain the Tenant's security deposit for loss.

The Tenant is also claiming \$3,245.72 as a result of the Landlord improperly increasing the rent throughout the tenancy. The Tenant provided a detailed account of each rent increase that was applied throughout the tenancy. The parties agreed that the rent increases issued by the Landlords were all done verbally. The Landlords stated that they could not recall the amounts or timing of the rent increases applied. The parties agreed that the rent had been \$1,400.00 at the start of the tenancy and had increased to \$1,900.00 by the end of the tenancy. The Tenants are claiming for the return of the

rent increases as they were not in the proper form and were above the allowable amount. The Tenants provided the following table outlining the increases applied by the Landlords.

Rent Increase Date	Rent Increased per Month (\$)	New Rent per Month with Increase Paid (\$)	Rent Increased (%)	Yearly Rent Increased Paid (\$)	Rent Increase Allowed by Law (%)	Yearly Rent Increase Allowed by Law (\$)	New Rent per Month with Increase allowed by law (\$)	Yearly Overage Paid in Rent Increase (\$)
Jan. 2017	\$100	\$1500	7.1%	\$1200	3.7%	\$621.60	\$1451.80	\$578.40
Jan. 2018	\$100	\$1600	6.7%	\$1200	4.0%	\$696.86	\$1509.87	\$503.14
Jan. 2019 & Jan. 2020	\$150	\$1750	9.4%	\$1950 (includes Jan. 2020)	2.5%	\$452.96	\$1547.62	\$1497.04
Feb. 2020	\$50	\$1800	2.9%	\$550 (excludes Jan. 2020)	2.6%	\$482.86	\$1587.86	\$67.14
Jan. 2021	\$100	\$1900	5.6%	\$600	0%	\$0.00	\$1587.86	\$600.00

**Total Overage Paid: \$3245.72**

### Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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.

In this case, the burden of proof is on the Applicant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

### The Landlords' Claims

According to Section 45 (1) of the *Act*; a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the parties had mutually agreed to end the tenancy on July 31, 2021. I accept that the Tenant notified the Landlords in June 2021 that they would vacate the rental unit on June 30, 2021. I find that the Tenants ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*. As such I find that the Landlord is entitled to compensation equivalent to one month of rent, which equates to **\$1,400.00** based on my finding listed below regarding the improper rent increases applied by the Landlords throughout the tenancy.

With respect to the unpaid utilities, I accept that the parties agreed during the original hearing that the Tenant owes the Landlord \$465.00 in unpaid Hydro and Fortis Utilities. As such, I award the Landlords **\$465.00**.

The Landlords are claiming \$2,271.03 which represents 50% of the sewer bill throughout the tenancy. In this case I find that the tenancy agreement does not state that the sewer costs are included in the rent. I find that the tenancy agreement states that the Tenant is responsible for paying 50% of the utilities. I find that it is reasonable to expect that the Tenant pay 50% of the sewer bill to the Landlords along with the rest of the utilities.

However, I find that the Landlords have only provided one sewer bill in their documentary evidence in support of the cost associated with sewer charges. While the Landlords provided a hand written monetary breakdown of the costs for previous sewer bills, I find that the Landlords provided insufficient evidence to confirm these the amounts being claimed for. As such, I only award the Landlords with **\$374.35** which is half the amount of the only sewer bill provided by the Landlords in their documentary evidence.

Having been partially successful with their Application, I find the Landlords are entitled to the recovery of their **\$100.00** filling fee.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award of \$2,339.35. I find it appropriate in the circumstance to order that the Landlord retain the \$700.00 security deposit in partial satisfaction of their claims, which have been calculated as follows:

<b>Claim</b>	<b>Award</b>
Loss of Rent:	\$1,400.00
Utilities Hydro/Fortis:	\$465.00
Sewer bill:	\$374.35
Filling fee	\$100.00
<i>Less the Security Deposit</i>	- (\$700.00)
<b>TOTAL:</b>	<b>\$1,639.35</b>

### The Tenant's Claim

With respect to the Tenant's claim for the recovery of their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

I accept that the tenancy ended on July 2, 2021 and that the Tenant provided the Landlords with their forwarding address which was confirmed received by the Landlords on July 2, 2021. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until July 17, 2021, to repay the deposit or make a claim against it. I find that the Landlords submitted their Application on August 8, 2021, which is outside of the time limit permitted under the *Act*. Accordingly, I find the Tenant is entitled to the return of double the amount of the deposit ( $\$700.00 \times 2 = \mathbf{\$1,400.00}$ ).

The Tenant is seeking monetary compensation in the amount of \$3,245.72 in relation to the Landlords increasing the rent above the allowable amount and was not in the proper form.

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

**(3) A notice of a rent increase must be in the approved form.**

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the *Act* outlined the allowable amount of rent increase;

**A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.**

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.



In this case, I accept the Tenant's detailed account of each rent increase which was verbally provided to the Tenant by the Landlords. I find that the rent increases applied by the Landlords were not in the approved form and were above the allowable amount each year. I further find that the Tenants did not agree to the rent increases in writing. As such, I find that the Landlords were not permitted to gradually increase the rent to from \$1,400.00 in 2017 to \$1,900.00 by 2021. I find that the Tenant has overpaid their rent each month since January 2017 and therefore I award the Tenant compensation in the amount of **\$3,245.72** for the overpayment of rent.

With respect to the Landlords' compensation for the loss of rent for July 2021 noted above, I find that the true amount of rent due to the Landlords at that time was \$1,400.00 given my finding relating to the improper rent increases.

As the Tenant was successful with their Application, I find that they are entitled to the return of the **\$100.00** filing fee.

In summary, I find the Tenant has demonstrated an entitlement to a monetary award of \$4,745.72 which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Doubling of Security Dep.:	\$1,400.00
Improper Rent Increase:	\$3,245.72
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$4,745.72</b>

### Set-off of Claims

The Tenant has demonstrated an entitlement to a monetary award of \$4,745.72. The Landlords have demonstrated an entitlement to a monetary award of \$1,639.35.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Tenant with a monetary order in the amount of \$3,106.37 (\$4,745.72 - \$1,639.35).

Conclusion

The Tenant is granted a monetary order in the amount of \$3,106.37. The monetary should be served on the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 2, 2022

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Residential Tenancy Branch