



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: **MNRL-S, FFL**  
                                 Tenants: **FFT, MNSD, MNDCT**

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order to recover money for unpaid rent, holding the security deposit pursuant to Sections 26, 38, 62, and 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Tenants' cross application pursuant to the Act for:

1. An Order for the return of the Tenants' security deposit pursuant to Section 38 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Support, the Tenants and the Tenants' Legal Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice"), personally served on October 2, 2021;
- the Landlord's Notice of Dispute Resolution Proceeding package served by registered mail (according to the Landlord), and personally (according to the Tenants) in January 2022;
- the Landlord's evidence package served by registered mail on June 10, 2022, deemed served June 15, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package served by registered mail on February 25, 2022, deemed served on March 2, 2022;
- the Tenants' evidence and amendments served by registered mail on March 4, 2022, deemed served on March 9, 2022; and,
- the Tenants' final evidence package served by registered mail on June 21, 2022, deemed served on June 26, 2022.

Canada Post Tracking Numbers are noted on the cover sheet of this decision. Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all documents related to the hearing in accordance with the Act.

#### Issues to be Decided

For the Landlord:

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent, holding the security deposit?
2. Is the Landlord entitled to recovery of the application filing fee?

For the Tenants:

1. Are the Tenants entitled to an Order for the return of the Tenants' security deposit?
2. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
3. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on March 1, 2021. The fixed term was to end on February 28, 2022. Monthly rent is \$2,100.00 payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$800.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord served a Two Month Notice on October 2, 2021 stating the reason to end the tenancy was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was February 28, 2022.

The Landlord testified that she was not aware that she was to live in the residential property for six months. The Landlord stated that in mid January her boyfriend proposed to her, and he wanted her to come and live with him. The Tenants uploaded documentary evidence showing the rental unit was offered for rent at \$2,500.00 plus utilities on, at least, January 21, 2022 and the Landlord confirmed that she has new renters in the rental unit.

The Tenants confirmed they did keep asking the Landlord for an extension to the effective date of the Two Month Notice; however, the Landlord could only extend the date to April 30, 2022. The Tenants gave the Landlord notice by text message on November 30, 2021 that they would be moving out of the rental unit on January 1, 2022 as they had secured a new rental that worked for their family.

A move-in condition inspection was not completed at the beginning of the tenancy. A move-out condition inspection was organized by the Tenants and a copy of the move-out condition inspection report was given to the Landlord. The Tenants provided their forwarding address in writing to the Landlord on December 31, 2021.

The Landlord did not list any damage on the move-out condition inspection report dated December 31, 2021. The Tenants did not agree to any deductions from their security or pet damage deposits noted on the move-out condition inspection report.

On September 30, 2021, the Landlord sent the following text to the Tenants:

*I just want to give you a heads up. I will not be renewing your lease . As of march 1, 2022 I will be moving into my house . You will have all that time to find a place , if something comes available before the end of February I totally understand. [Person] is bringing a load of my things on Saturday so he will give you the written notice*

The Tenants stated they understood this to mean, and wrote that the Landlord said, "... if we found a home you were willing to work with us and as soon as you give notice that you were wanting to take your home back we have the right to find a new home whether there are months residing in our contract or not as we need to take care of our needs as well." The Tenants stated they were under the impression that the Landlord would sign off on an earlier move out date without holding them to the fixed term tenancy.

The Landlord uploaded a text message dated November 29, 2021 stating, "... the lease agreement that you signed committed to a term that ends the end of February. I am happy that you have found a rental alternative, but I do expect that you make payments for the term that you committed to. I will review what the landlord/tenant act advises." A November 30, 2021 text message from the Landlord to the Tenants states, "As per the tenancy documents – if you leave early you still are responsible for 'any loss incurred by the landlord, such as rent...' (Page 23 of the tenancy document) I don't want to be unreasonable, I would be willing to accept only December rent with a January 1st vacancy"

The Landlord testified that she did not act in bad faith. She is seeking unpaid rent for December 2021 and January 2022.

The Tenants seek return of double the deposits. The Tenants are seeking tenant's compensation pursuant to Section 51(2) of the Act, which is compensation in the amount of 12 times the monthly rent payable under the tenancy agreement for a total amount of \$25,200.00.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

## Security and pet damage deposits

Under Sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and the *Residential Tenancy Regulation* (the “Regulations”). Further, Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties, I accept that the tenancy ended on December 31, 2021 and that the Tenants provided their forwarding address on this same date.

The Landlord stated she did not complete a move-in condition inspection of the rental unit prior to the Tenants moving into the rental unit pursuant to Section 23 of the Act. On December 31, 2021, the Landlord and Tenants did a move-out condition inspection of the rental unit, and the Tenants provided the Landlord with a copy of the executed document pursuant to Part 3 of the Regulations. There was no indication on the move-out condition inspection report that the Tenants agreed to any deductions from their deposits. The Tenants provided their forwarding address to the Landlord on the move-out inspection date.

Based on the testimony of the parties about move-in and move-out inspections, I find the Tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to Sections 24 or 36 of the Act. In contrast, the Landlord did extinguish their right to claim against the security deposit for damage to the residential property and the pet damage deposit for damage to the residential property caused by the Tenants’ pet as no move-in inspection was completed by the Landlord, and the move-out condition inspection report does not address any damage to the residential property caused by the Tenants’ pet.

A security deposit is defined as money paid to the landlord to be held as security for *any liability or obligation of the tenant* respecting the residential property. The Landlord’s only claim is for unpaid rent, for which she applied on time, and the Landlord is entitled to claim against the Tenant’s security deposit of **\$1,050.00** for unpaid rent.

RTB Policy Guideline #31 – Pet Damage Deposits provides a policy intention of the legislation and states:

*The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)*

The Landlord has not claimed against the pet damage deposit for pet damage as the only claim before me is for unpaid rent. Therefore, the Landlord was not entitled to keep the pet damage deposit and had to return the pet damage deposit within 15 days of December 31, 2021 pursuant to Section 38(1) of the Act. The Landlord had not returned the pet damage deposit by January 15, 2022, and therefore did not comply with Section 38(1) of the Act in relation to the pet damage deposit. Given this, and pursuant to Section 38(6) of the Act, the Landlord cannot claim against the pet damage deposit and must return double the pet damage deposit to the Tenants. The Landlord therefore must return **\$1,600.00** to the Tenants. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

Section 45 of the Act sets out how and when a tenant in a fixed term tenancy may give notice to end their tenancy. It states:

***Tenant's notice***

**45** ...

- (2) *A tenant may end a fixed term 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,*
  - (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
  - (c) *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.*

...

- (4) *A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*  
(emphasis added)

The ending of the fixed term in this tenancy was February 28, 2022. The Tenants in this matter pursuant to Section 45(2)(b) of the Act cannot end the tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. As the Landlord provided a Section 49 notice to end tenancy, the Tenants were entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement in accordance with Section 51(1) of the Act. The Tenants are required to pay rent for the entire fixed term, and the Tenants may apply the Section 51(1) compensation to the last month's rent. The last month in this tenancy was February 2022, and I find the Landlord is entitled to a monetary award pursuant to Section 67 of the Act for the unpaid rent for December 2021 and January 2022 in the amount of **\$4,200.00**.

The Landlord's Monetary Award is calculated as follows:

Tenants owe unpaid rent to Landlord	\$4,200.00
Less security deposit held by Landlord	-\$1,050.00
Less pet damage deposit held by Landlord	-\$1,600.00
Monetary Award to Landlord:	\$1,550.00

The Tenants seek Section 51(2) compensation pursuant to the Section 49 notice the Landlord served on them. I find that the Landlord has the onus to demonstrate that she followed through with the stated purpose as noted in the Two Month Notice. The Landlord submitted that the stated purpose for her issuing the Two Month Notice on the Tenants was that the Landlord or the Landlord's spouse will occupy the unit. The Landlord testified that her boyfriend proposed to her and wanted her to come and live with him. The Landlord's fiancé lives in a neighbouring community to the location of the rental unit. The Landlord confirmed that she did not move into the home and that she secured new renters in the property.

Section 51(2) and (3) of the Act state:

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

**51** ...

- (2) *Subject to subsection (3), the landlord or ... 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 the landlord or purchaser, as applicable, does not establish that*

- (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
  - (b) *the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*
- (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 applicable, from*
  - (a) *accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and*
  - (b) *using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

RTB Policy Guideline #50: Compensation for Ending a Tenancy discusses the requirements for a landlord to pay compensation to a tenant under the Act when:

...

- *a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given;*

...

The tenancy ended earlier than the end of the fixed term tenancy, on December 31, 2021. The Landlord, by her own admission, moved into her fiancé's home in a neighbouring community and secured a new renter in the property. I find that the stated purpose for ending the tenancy did not occur. The Landlord may only be excused from the Section 51(2) compensation requirements if extenuating circumstances prevented the Landlord from accomplishing the stated purpose.

Policy Guideline #50 discusses what may be considered an extenuating circumstance:

**E. EXTENUATING CIRCUMSTANCES**

*An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:*

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

The Landlord is newly engaged and submits this prevented her from occupying the rental unit as her fiancé wanted her to live with him. The distance between the two communities from which the Landlord's rental unit is, and where the Landlord's fiancé resides is negligible. I do not find that the circumstances the Landlord submits prevented her from residing in the rental unit for at least six months and qualify as an extenuating circumstance. The Landlord was not physically prevented from residing in the rental unit based on the circumstances of her interpersonal life. I find the Landlord chose to move in with her fiancé and I am not satisfied there were extenuating circumstances which would make it unreasonable or unjust to hold the Landlord to her legislated responsibilities. I find the Landlord did not accomplish the stated purpose for

ending the tenancy for Landlord's Use and she is not excused from paying compensation to the Tenants specified under Section 51(2) of the Act.

The Tenants are entitled to compensation in the amount of **\$25,200.00** pursuant to Section 51(2) of the Act.

As both parties were successful in their respective claims, each party will bear the cost of their respective application filing fees.

The Tenants' Monetary Award is determined as follows:

Tenants' S. 51(2) monetary award:	\$25,200.00
Less Landlord's monetary award:	-\$1,550.00
TOTAL Monetary Award to Tenants:	\$23,650.00

### Conclusion

I grant a Monetary Order to the Tenants in the amount of \$23,650.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: July 27, 2022

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Residential Tenancy Branch