



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, MNETC

### Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$4,500.00 for the Tenants' monetary loss or money owed by the Landlords pursuant to section 67;
- recovery of the Tenants' security deposit pursuant to sections 38 and 38.1; and
- compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose pursuant to section 49.

The Landlords and one of the Tenants, JH, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. One of the Landlords, MS, assisted the other Landlord BS as an interpreter.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

### Preliminary Matter – Correction of Dispute Address

The Landlords confirmed the correct postal code for the dispute address. I have amended the application accordingly.

### Preliminary Matter – Naming Parties

JH confirmed that RP was also a tenant on the tenancy agreement and that she is attending on his behalf. I have amended the style of cause accordingly.

At the outset of the hearing, MS objected to being named as a landlord on this application. MS testified that he did not sign the tenancy agreement.

Section 1 of the Act defines a “landlord”, in relation to a rental unit, to include not only the owner of the rental unit, but also the owner’s “agent” or “another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement”.

I have reviewed a copy of the tenancy agreement and find that only BS is listed as a landlord. However, I accept JH’s testimony that MS acted as his father BS’s agent in dealing with the Tenants during the tenancy.

In addition, based on the text messages submitted by the Tenants, I find that MS:

- communicated with the Tenants during the tenancy on BS’s behalf;
- dealt with the Tenants’ repair requests during the tenancy; and
- negotiated the terms for ending the tenancy with the Tenants.

In the text messages, MS also made statements suggesting he had a personal obligation and the authority to write the Tenants a “legal letter”, to “check the place”, and to “pay” the Tenants. These text messages are reproduced in full in the Background and Evidence section below.

Accordingly, I conclude that MS may be named as a landlord for the purposes of this application.

#### Preliminary Matter – Service of Dispute Resolution Documents

JH testified that she served the Landlords each with a separate copy of the notice of dispute resolution proceeding package and the Tenants’ documentary evidence (collectively, the “NDRP Packages”) by registered mail on December 9, 2022. JH submitted two Canada Post registered mail receipts with tracking numbers in support. Those Canada Post tracking numbers are referenced on the cover page of this decision.

The Landlords stated that they did not receive any documents from the Tenants.

Tracking records for the NDRP Packages show that the NDRP Packages were not picked up by the recipients and were ultimately returned to the sender.

The Landlords did not provide any explanation as to why they may have been unavailable to receive the NDRP Packages or could not pick up the NDRP Packages from the post office in December 2021.

During the hearing, MS commented that the Landlords did not know about this hearing until 7 days before, which would have been June 27, 2022. However, records show that the Landlords had called the Residential Tenancy Branch on June 20, 2022 to request information for this hearing.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Policy Guideline 12 further states:

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

Based on the parties' testimonies and the evidence before me, I find that the Landlords have not provided any evidence to suggest why the deemed receipt presumption should be rebutted. I am satisfied on a balance of probabilities that the Landlords deliberately failed to pick up the NDRP Packages from the post office.

Accordingly, I find that the Landlords have been served with the NDRP Packages in accordance with sections 88 and 89 of the Act. I further find that pursuant to section 90 of the Act, the Landlords are deemed to have received the NDRP Packages on December 14, 2022.

The Landlords submitted a written statement of unpaid utilities and a copy of the parties' tenancy agreement as evidence. JH acknowledged receipt of the Landlords' documents. Although the Landlords did not submit these documents at least 7 days prior to the hearing as required by Rule 3.15 of the Rules of Procedure, I will admit these documents as I find the Tenants to have been sufficiently served pursuant to section 71(2) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed by the Landlords?
2. Are the Tenants entitled to recovery of their security deposit?
3. Are the Tenants entitled to compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The tenancy commenced on April 1, 2021 and was to continue for a one-year fixed term. Rent was \$1,950.00 due on the first day of each month. The Tenants paid a security deposit of \$975.00, which is still held by the Landlords. The tenancy ended early on October 30, 2021. The circumstances surrounding the end of the tenancy are in dispute.

JH testified that most of the Tenants' communication was with MS. JH testified that on October 28, 2021, she had a telephone conversation with MS in which they agreed for the Tenants to move out from the rental unit by the end of October 2021, in return for compensation of two months' rent from the Landlords to the Tenants.

JH testified that an hour or two after that call, MS called back to say that his father, BS, did not agree with the two-month compensation, and that the Tenants would only receive one month's rent.

JH testified that she texted MS to say that one month's rent would be sufficient compensation, and that the Landlords must pay that compensation before the Tenants leave, because the Tenants needed the money for moving expenses. JH explained that the compensation would help the Tenants with having to move out on short notice along with the Tenants' two young children.

JH testified that MS agreed to her proposal of one month's rent, and the Tenants were to receive the funds and sign a mutual agreement to end tenancy with the Landlords on the morning of October 31, 2021.

JH testified that the Tenants moved out of the rental unit on the night of October 30, 2021. JH testified that when the Tenants returned to the property on October 31, 2021 to meet with the Landlords, they found the locks already changed and people in the house. JH testified that the Landlords called the police on the Tenants and asked them to leave. JH stated the police explained that since the Tenants had already agreed to move out on October 30, 2021, they would need to leave and contact the Residential Tenancy Branch. JH testified that as a result, the parties did not end up signing a mutual agreement to end tenancy and the Tenants did not receive compensation of one month's rent from the Landlords.

JH testified that she gave the Tenants' forwarding address to the Landlords on December 2, 2021. The Tenants submitted copies of an email and text message to the Landlords in support. JH argued that the Tenants are entitled to double the damage deposit because the allotted time frame for the Landlords to return it has passed.

JH testified that at the beginning of the tenancy, the parties had verbally agreed for the Tenants to share utilities with the other tenants on the rental property. JH stated that the parties did not agree on a percentage split, but the Tenants assumed it would be something like a 60-40 split with the two tenants in the basement suite. JH testified that after moving in, the Tenants discovered there were two more tenants living in an "illegal suite" attached to the back of the house. JH testified that the Tenants decided a fairer split would be one-third of the utilities and requested for the utilities to be re-calculated.

JH acknowledged she had agreed for MS to keep the security deposit for utilities on October 28, 2021, and that the Tenants are still completely willing to pay their fair share. JH stated that the damage deposit should not go entirely to utilities when it is more than what the Tenants owe. JH argued that the numbers in the Landlord's statement regarding unpaid utilities do not add up.

The text message correspondence submitted by the Tenants show the following exchange between JH and MS, which are said to have occurred on Thursday, October 28, 2021:

JH (5: 52 p.m.): *We want 1 month's rent. Keep the damage deposit for utilities and we'll leave this weekend. Just called rtb another tenant is not considered a reliable witness. We never agreed to it in writing nor did we agree verbally.*

MS (6:08 p.m.): *Will the house be fully cleaned and not have any damages that wasn't there before because I have the video of the whole house of everything along with pictures and will it be empty by Saturday evening*

(6:09 p.m.): *My neighbour is also a witness  
So that's a different story*

JH (6:14 p.m.): *If you pay me 1950 via e transfer either tonight or tomorrow then yes the house will be cleaned properly. There aren't any damages. There is normal wear and tear like from where we hung pictures but that is all. No damages*

(6:15 p.m.): *Or cash*

MS (6:18 p.m.): *I can right (sic) you a legal letter stating we will reimburse the amount agreeing for the hardship you faced because you have kids and you have to move on short notice. I will then need to check the place because there might be damages there then you have 1950 and the utilities and I have no damage deposit left after you have left the place because. I have no guarantee you will move and I don't want to go through the process of eviction so you can take the letter and mutual agreement to end tenancy but I will pay you if everything is good.*

JH (6:26 p.m.): *You can come tomorrow night to see there is no damage around 8:30-9 and pay us the \$1950 and we will sign the mutual agreement to end tenancy. But we need the money for moving expenses.*

MS (6:47 p.m.): *On Saturday night I can give you your money and I can check for damages because there is always a move out Inspection I can give you cash at that time and take the keys*

JH (6:47 p.m.): *How am I supposed to trust that you will give us the money after we already would have moved out.*

MS (6: 49 p.m.): *Did I not come and fix your handle and your laundry machine and I have never bothered you with in house inspections after a month what reason do you have no (sic) to believe me  
You have my word*

JH (6:55 p.m.): *There was no handle and it took like a month to find it and have it fixed. The driveway took months of headache, arguing and inconvenience to get it back after our agreement was broken by you when you allowed them to park there. Multiple letters and appearance basically harassing us for things we did not do which is also against rtb, trying to tell me how to parent my children also blaming them for things that are absurd. Should I go on.. we have valid reasons for not trusting you. Since we moved in things have been dealt with very unprofessional (sic). Only thing that was dealt either property and efficiently was the laundry machine leaking.*

(6:59 p.m.): *Fine you meet us at the house Saturday night at 8pm. You can look to see if there's no damage and that it's clean. Then you will pay us the \$1950 cash*

MS (7:02 p.m.): *Ok I will meet you then*

(7:15 p.m.): *Can I come tomorrow night or Saturday morning to see your actually moving because then I have to tell the other tenants to not move*

JH (7:16 p.m.): *I just rented a truck for Saturday*

MS (7:17 p.m.): *Otherwise I will lose money so your uhaul truck will be there Saturday right if I pass by  
Otherwise I will lose money so your uhaul truck will be there Saturday right if I pass by (sic)*

JH (7:23 p.m.): *Yes you can come by see that we are moving.*

MS (7:23 p.m.): [thumbs up]

In response, MS testified that the Landlords were not given a copy of the text messages and has "no clue" what they are. MS testified that the messages were sent from a

number that is not BS's phone number as stated on the tenancy agreement. MS testified he called the number and found it is a texting app. MS argued JH could have texted herself on that number.

MS testified the Tenants knew about the other tenants residing at the rental property and never paid utilities for the duration of their stay. MS stated the Tenants did not want to pay 40% of the utilities and that the Landlords have paid 100%.

MS testified he was there when BS received the call from JH. MS testified JH had blocked his number and stated that he wasn't her landlord. MS stated that BS said he never made an agreement with the Tenants, but was willing to meet them the next morning just to see what they were talking about. MS testified that the Landlords did not know the Tenants were leaving the rental unit.

MS testified the Tenants came to the rental property on Sunday, October 31, 2021 and made a big scene, causing the Landlords to call the police. MS testified the Landlords changed the locks to the rental unit the following day, on November 1, 2021.

MS testified the Tenants got tired of the problems and left the rental unit in a day without having really communicated with the Landlords. MS testified there was no move out inspection. MS testified the Tenants' address is just a PO box and that the Landlords do not know where the Tenants live.

MS testified the Landlords did not agree to the one-month compensation either verbally or in writing, and that they did not know the Tenants were moving.

In reply, JH testified that she received the initial phone call from MS on October 28, 2021 from the number through which the parties later exchanged text messages. JH testified she tried calling MS back many times and later discovered it was an app. JH testified she then called BS and agreed to meet the next morning.

JH testified the locks to the rental unit were already changed when the Tenants arrived at the rental property on October 31, 2021. JH denied that the Tenants threatened the Landlords.

JH testified she received an email from the Landlords on September 12, 2021 with a spreadsheet that stated the Tenants owed \$1,088.37 in utilities. JH testified the Tenants received copies of bills from BC Hydro, FortisBC, and the municipality, but that the

numbers did not add up. JH testified that the Landlords were requesting close to 100% of the utilities for the time that the Tenants were living there, when there had been four other tenants. JH stated that the Tenants requested a recalculation for the utilities, which the Landlords refused.

MS testified that the rental unit has a separate meter for utilities from the municipality. MS testified that the Landlords have a recording of JH saying BS can keep the security deposit for utilities.

The Landlords submitted a written statement which suggests that the Tenants owed a total of \$1,088.37 in utilities as follows:

- \$512.77 representing 60% of the April 2021 to July 2021 BC Hydro bills
- \$166.85 representing 60% of the April 2021 to August 2021 FortisBC bills
- \$408.75 representing 100% of the April 2021 to August 2021 water bills from the municipality for the rental unit

### Analysis

*1. Are the Tenants entitled to compensation for monetary loss or other money owed by the Landlords?*

Residential Tenancy Policy Guideline 30. Fix Term Tenancy states:

A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date. A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required.

Based on the evidence before me, I find on a balance of probabilities that the parties agreed for the fixed-term tenancy to be ended early (on Saturday, October 30, 2021) and for the Tenants to receive one month's rent as compensation for having to move out on short notice. I find that the text message record submitted by the Tenants constitute sufficient evidence in writing of an agreement between the parties. I note in particular the following text message from MS which states:

*MS (6:18 p.m.): I can right (sic) you a legal letter stating we will reimburse the amount agreeing for the hardship you faced because you have kids and you have to move on short notice. I will then need to check the place because there might be damages there then you have 1950 and the utilities and I have no*

*damage deposit left after you have left the place because. I have no guarantee you will move and I don't want to go through the process of eviction so you can take the letter and mutual agreement to end tenancy but I will pay you if everything is good. (emphasis added)*

Although the Landlords question the validity of the text messages, I do not find the Landlords' argument to be convincing or credible on a balance of probabilities. I do not accept the Landlords' claim that the Tenants texted these messages to themselves. I find it unusual that MS knew the number was from a texting app, while taking the position that the Landlords have not received a copy of these text messages and have "no clue" what they are about. I accept JH's testimony that she initially received a call from MS at this number and subsequently exchanged texts with him at the same number.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, I am satisfied that the parties' agreement to end their fixed-term tenancy early on specific terms constitute a modification to or amendment of their original tenancy agreement. I therefore find that the Landlords have breached the parties' tenancy agreement by failing to pay compensation of one month's rent to the Tenants when they moved out of the rental unit.

I note the Tenants seek two months' rent as compensation on the basis of the earlier phone call between JH and MS, although JH acknowledged that MS changed the amount to one month's rent after speaking with BS. Based on this evidence alone, I am unable to find that the parties had agreed to compensation of two months' rent. I accept the parties may have discussed different amounts of compensation in the course of negotiating an early end to the tenancy before coming to an agreement.

Pursuant to section 67 of the Act, I order that the Landlords pay the Tenants compensation in the amount of one month's rent, or \$1,950.00.

*2. Are the Tenants entitled to recovery of their security deposit?*

Sections 38(1), (4), (5) and (6) of the Act state as follows:

**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.

[...]

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2)

*[landlord failure to meet start of tenancy condition report requirements]* or 36 (2)

*[landlord failure to meet end of tenancy condition report requirements]*.

(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.

[...]

In this case, I find the Tenants have authorized the Landlords in writing to retain the security deposit for unpaid utilities, based on the following text message:

JH (5:52 p.m.): *We want 1 month's rent. Keep the damage deposit for utilities and we'll leave this weekend. Just called rtb another tenant is not considered a reliable witness. We never agreed to it in writing nor did we agree verbally.*  
(emphasis added)

I further find that the above authorization was a term of parties' agreement to end the tenancy early. As a result, I find the Tenants are not entitled to resile from this position after moving out of the rental unit.

Based on the foregoing, I conclude that the Landlords are entitled to retain the Tenants' \$975.00 security deposit for unpaid utilities, pursuant to section 38(4)(a) of the Act. The Tenants' claim under this part is dismissed without leave to re-apply.

I note that the Landlords claim the Tenants owe \$1,088.37 in unpaid utilities, which exceeds the amount of the security deposit they hold. However, since the Landlords have not made their own application, there is no authority for me to grant the Landlords any monetary compensation.

*3. Are the Tenants entitled to compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose?*

Sections 51(1) and 51(3) of the Act state as follows:

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

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[...]

(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 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.

In this case, the Tenants do not allege that the Landlords have issued a two month notice to end tenancy for landlord's use under section 49 of the Act.

Accordingly, I find the Tenants are not entitled to any compensation under sections 51(1) or 51(3) of the Act. The Tenants' claim under this part is dismissed without leave to re-apply.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$1,950.00**. 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 Small Claims Division of the Provincial 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: August 2, 2022

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Residential Tenancy Branch