



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      LRE, MNDCT / MNRL-S, MNDL-S, MNDCL-S, FFL

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlords’ application for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and utilities and for damage to the rental unit in the amount of \$5,599.48 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$8,558.44 pursuant to section 67; and
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue – Amendment of Tenant’s Application**

On the tenant’s application, she listed the address as “(Basement) A [street address redacted]”. At the hearing, she advised me that the “A” did not form part of the rental unit’s address. The landlords confirmed this. As such, I order the tenant’s application amended to remove the “A” from the address of the rental unit.

Additionally, the parties advised me that the tenant vacated the rental unit on April 5, 2022. As such, the tenant no longer requires an order setting conditions or suspending the landlords’ right of enter into the rental unit. I dismiss this portion of the tenant’s application.

### **Preliminary Issue – Joinder of Landlord’s Application**

This hearing was originally scheduled only to address the tenant’s application. However, at the outset of the application, the parties advised me of the existence of the landlords’ application, which was set for hearing in January 2023. I asked if the parties would like

to adjourn the tenant's application so it could be heard at the same time as landlords. The parties indicated that they would prefer if both applications were adjudicated at this hearing. Accordingly, and by consent, I ordered that the two matters be heard together at this hearing.

The parties acknowledge that each had served the other with their respective notices of dispute resolution proceeding packages and supporting documentary evidence. As such I deem that each reserved in accordance with the Act.

### **Issues to be Decided**

Are the landlords entitled to:

- 1) a monetary order for \$5,599.48;
- 2) recover the filing fee;
- 3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Is the tenant entitled to a monetary order of \$8,558.44?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting June 28, 2021 and ending June 30, 2022. After the end of this fixed term, the tenancy was to have converted to a periodic tenancy and was to have continued on a "month to month" basis. Monthly rent was \$1,650 and was payable on the first of each month, plus 33% of hydro (heating) and 33% of water/sewer (metered consumption). The tenant paid the landlords a security deposit of \$750 and a pet damage deposit of \$150, which the landlords continue to hold in trust for the tenant.

The tenancy contained an addendum containing an "entire agreement" clause which stated:

The Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease is hereby superseded. This lease may be modified only by a writing signed by both landlord and tenant.

[as written]

The tenant vacated the rental unit on April 5, 2022. The tenant did not provide a forwarding address to the landlord.

The parties did not conduct a move in or a move out condition inspection of the rental unit.

The tenant testified that the landlords' other tenant ("J"), who lived next door, brokered the tenancy agreement on behalf of the landlords. The landlords disagreed, and ST testified that J alerted the landlords to the tenant's interest in the renting the rental unit, but that CS was in contact with the tenant during the time the tenancy agreement was negotiated.

The tenant testified that when she moved to British Columbia, she was looking for a pet-friendly, long-term rental unit. She did not want to move to a rental unit where she would only be permitted to stay for one year. She testified that she spoke with J and he verbally represented to her that she would be able to stay in the rental unit "for a few years".

The tenant testified that when she moved into the rental unit, J helped her unload her belongings and the landlords were not present. She testified that when ST arrived in mid-July 2021, she started yelling at J and the tenant. J and CS then approached the tenant for a conversation, and the tenant became defensive. The tenant told CS and J that she did not appreciate being exposed to such conduct from ST and that she had moved to British Columbia "to heal" and "have peace".

The tenant testified that, on March 21, 2022, ST came into the rental unit and told that the tenant would have to vacate the rental unit at the end of the fixed term, as she had family coming and they needed to live in the rental unit. The tenant refused to leave and she testified that ST told her she "had to leave".

Following this encounter, the tenant texted ST and told her not to return to the rental unit. Then she texted CS, asking what the status of her tenancy was. She wrote:

please explain why [ST] is asking me to vacate after my year lease. I ensured the unit would be available for several years and you know this. I have no intention of leaving. And I will not discuss anything least related with [ST] at this point. You want me to vacate for a week to hide as renter and then kick me out?

CS did not respond. The tenant testified that this is when she knew that the landlords "evicted" her.

The tenant testified that CS had previously asked her to vacate rental unit for a week so that the landlords could "modify the rental unit" to hide outlets for appliances to make it look unrentable.

The tenant testified that she arranged to be away from the rental unit for seven days, but after not receiving any response from CS, she cancelled these arrangements.

On March 24, 2022, the landlords posted a letter to the door of the rental unit in which they wrote:

We have no intention of breaking the lease agreement before the fixed term is complete.

We have enclosed a mutual agreement to end tenancy. If you are in agreement, please complete the form and return to us and we will give you a copy. If you are ending the tenancy before the fixed term, you are required to serve proper notice.

“If a tenant leaves without giving proper notice or paying the full rent, the landlord can apply for dispute resolution to get money for unpaid rent” (RTB website).

We will suspend the minor renovations in the basement at this time.

We will neither imburse any cancellation fees for your trip, nor pay any moving expenses.

Going forward we think it best that all communication be in the form of written correspondence on paper, not texts or emails.

The mutual agreement to end tenancy attached to this letter specified an effective date of June 30, 2022. The tenant did not sign it.

On March 31, 2022, the tenant texted CS that she would be moving out on April 5, 2022.

On April 4, 2022, the landlords delivered a letter to the tenant. It stated:

On March 31, 2022, you have communicated by text message that you are moving out on April 5, 2022. As stated in our letter to you on March 24, 2022, you are required to serve proper notice if you are ending tenancy before the fixed term. The fixed term ends June 30, 2022.

By law you are required to pay rent until June 30 2022. Your payment for April of \$275 is not acceptable. Your refusal to pay 1/3 utilities for hydro, water and sewer from December to March is not in accordance with the rental agreement. Also, utilities for the end of April 5, 2022 will be forthcoming.

During your tenancy, the upper suite was fully vacant for 62 days. We continue to contribute 2/3 utilities. Your claim that we had guests is unacceptable in your rationale. You were not charged for natural gas. The upper suite is primarily heated by this means. Guests have no legal bond to our rental agreement period from July 1, 2021 to April 4, 2022 we had guests for 35 days.

\$687.68 for utilities remains outstanding. \$1,375 for April rent remains outstanding.

[...]

Please E transfer to us \$2,062.68.

The tenant did not pay this amount and vacated the rental unit on April 5, 2022. She testified that she stayed in a hotel the night of April 5, 2022, and then stayed with a friend from April 6 to April 29, 2022. Following this, she was unable to secure a new rental unit, so she moved into a hotel from April 29 to May 9, 2022. She incurred costs of \$1,490.11 for these hotel stays. She seeks to recover this amount.

Additionally, the tenant incurred a further cost for staying a hotel of \$791.73 from June 16 to 24, 2022. She seeks to recover this cost as well.

The tenant testified that the movers cost her \$4,000. She testified that she “wanted to move quickly” so she had to pay a premium. Additionally, she is paying for storage of her belongings while she looks for a new rental unit. She has paid \$1,376.60 for storage for May, June, and July, 2022. The tenant provided documentary corroboration of all of these expenses.

The tenant testified that the landlords had not returned either of her deposits.

In total, the tenant seeks a monetary order of \$8,558.44, calculated as follows:

Description	Amount
Hotel (April 5 and April 29 to May 9)	\$1,490.11
Hotel June 16 to 24	\$791.73
Moving	\$4,000.00
Storage	\$1,376.60
Security Deposit	\$750.00
Pet Damage Deposit	\$150.00
<b>Total</b>	<b>\$8,558.44</b>

The landlords denied that they evicted the tenant. They argued that any costs incurred as a result of her vacating the rental unit in April were not caused by them. They argued that the tenant breached the fixed term tenancy agreement by vacating the rental unit prior to the end of the term.

The landlords testified that the tenant only paid \$275 of April 2022 rent. They submitted an e-transfer from the tenant showing this amount. The tenant agreed she only paid this amount for April's rent.

Additionally, the landlords seek a monetary order for \$3,300 representing the loss of the rent the tenant would have paid if she stayed for the full term of the tenancy agreement.



They argued that by breaching the tenancy agreement and moving out prior to the end of the fixed term, the tenant caused them to lose this income.

The landlords did not make any effort to re-rent the rental unit for May or June 2022.

They testified that their intention was to re-rent the rental unit in the winter.

The landlords testified that the tenant did not pay her share of the utilities for the period between December 17, 2021 and April 5, 2022. In total, the landlords testified that the tenant owes \$724.48 for utilities, as follows:

	Dec	Jan	Feb	Mar	April	Total
Sewer	\$ 38.61	\$ 38.61	\$ 38.61	\$ 38.61	\$10.63	\$165.07
Water	\$ 7.34	\$ 7.34	\$ 7.34	\$ 7.34	\$ 2.02	\$ 31.38
Hydro	\$125.97	\$125.97	\$125.97	\$125.97	\$24.15	\$528.03
					<b>Total</b>	<b>\$724.48</b>

The tenant agreed that she did not pay any of these amounts.

Finally, the landlords seek a monetary order for \$200 as compensation for the costs they incurred cleaning the rental unit after the tenant vacated. They testified that they spent seven hours cleaning the rental unit after the tenant vacated. They testified that she had done a “surface clean”, but failed to clean behind the fridge or stove.

Additionally, she did not wash the walls or the floors of the rental unit. They calculated the amount claimed based on a rate of \$30 per hour, rounded down to \$200.

In support of this allegation they provided a single photo of some rolled up carpets, wire shelving, flower pots, and miscellaneous detritus piled up outside the rental unit which they say tenant left in the rental unit. They did not provide any photographic evidence of the condition of the interior of the rental unit. As stated above, no move out condition inspection was conducted.

The tenant denied leaving the rental unit in an unclean state.

In summary, the landlords seek a monetary order of \$5,599.48, representing the following:

Description	Amount
Balance of April Rent	\$1,375.00
Loss of rent for May and June	\$3,300.00
Unpaid utilities (Dec 17, 2021 to Apr 5, 2022)	\$724.48
Damage to Rental Unit	\$200.00
<b>Total</b>	<b>\$5,599.48</b>

## **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

(the “**Four-Part Test**”)

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application.

So, each party bears the evidentiary burden to prove the merits of their respective claim on a balance of probabilities. Each must prove that the other breached the Act which caused them to suffer a quantifiable loss and each must prove that they acted reasonably to minimize that loss.

#### **1. Tenant’s Claim**

Section 44 of the Act sets out how parties may end a tenancy. It states:

#### **How a tenancy ends**

44(1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [*tenant’s notice*];

- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2)(a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Sections 46 to 49 of the Act all require a landlord to provide a written notice of end of tenancy, in an approved RTB form, to a tenant. The landlord did not provide any such written notice. Section 44(1)(b) of the Act only applies in cases where the tenancy agreement states that after the end of a fixed term, the landlord may end the tenancy so that the landlord or close family member can occupy it. The tenancy agreement signed by the parties does not contain such a term.

As such, I do not find that the landlord ended the tenancy. This finding is supported by the landlord's letters that were submitted into evidence. As such, the tenant was not required to vacate the rental unit when she did, or at all.

I note that, if the landlord wanted to end the tenancy so that a close family member (as defined by the Act) could move into the rental unit, they would have to have served the tenant with a notice to end tenancy for landlord's use of the rental unit, pursuant to section 49 of the Act. They did not do this.

I find that the landlords did not evict the tenant or end the tenancy. They may have indicated their intention or desire to end the tenancy once the fixed term had expired. This was their right to do, given to them by section 49 of the Act (and the tenant would have had the right to dispute it, per that same section). However, they never took the steps necessary under that section of the Act to accomplish the eviction.

I note that, due to the "entire agreement" clause set out above, any representation about the length of the tenancy made by J or the landlords during the negotiation of the tenancy agreement does not form part of the tenancy agreement. The term of the tenancy is governed by the written tenancy agreement signed by both parties.

As I have found that the landlords did not evict the tenant in contravention of the tenancy agreement, I do not find that the tenant has satisfied the first step the Four Part



Test. Accordingly, any expenses she incurred as a result of her move or not due to any breach of the Act or tenancy agreement by the landlords. Accordingly, I dismiss her application for the recovery of the moving expenses, hotel costs, or storage fees.

Section 38 of the Act Requires a landlord to return the security deposit and pet damage deposit to the tenant within 15 days of the later of either the end of the tenancy, or the date the landlords received the tenants forwarding address (I note that this does not have to be an address at which the tenant resides, only one at which she can receive mail).

As the tenant has not provided her forwarding address to the landlords, the landlords do not yet have any obligation to return either the deposits to the tenant. I dismiss this portion of the tenant's application.

## 2. Landlord's Application

The tenancy agreement states that monthly rent of \$1,650 is due on the first day of each month. Accordingly, this amount was due on April 1, 2022. The parties agree about the tenant only paid \$275 on this date. Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. A tenant is not permitted to withhold any portion of rent whether or not the landlord is in breach of the tenancy agreement or the Act. Additionally, a tenant is not entitled to pro-rate their rent if they move out of the rental unit before the end of the month.

Accordingly, I order the tenant to pay the landlord the balance of April's rent (\$1,375).

The tenant acknowledged that she has not paid any part of the utilities owed for Dec 17, 2021 to April 5, 2022. I order the tenant to pay the landlord \$724.48 (the amount of unpaid utilities claimed).

Section 45(2) of the Act sets out how a tenant may end a fixed-term 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.

The tenant did not do this. She notified the landlords five days before vacating the rental unit, and the date she vacated the rental unit before the end of the fixed term. She

therefore breached the tenancy agreement and the Act by vacating the rental unit on April 5, 2022.

The landlords testified that they did not make any effort to re-rent the rental unit.

Residential Tenancy Branch Policy Guideline 5 states:

**Loss of Rental Income**

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

As the landlords made no effort whatsoever to re-rent the rental unit for May or June 2022, I find that they failed to act reasonable to minimize their loss. Accordingly, I dismiss their application for compensation for loss of income.

Finally, the landlords seek \$200 for the cost of cleaning the rental unit. However, they did not provide any documentary evidence (such as a move-out inspection report, photographs, or videos) to corroborate their testimony that the rental unit was in the condition they said it was. The tenant denied leaving the rental unit in an unclean state.

In the absence of evidence to corroborate their claim, I find that the landlords have failed to discharge their evidentiary burden. I dismiss this portion of their application.

3. Security and pet damage deposits

Sections 23 and 35 of the Act require the landlord to conduct condition inspection reports at the start and end of the tenancy respectively. The landlords did not do this. Accordingly, their right to claim against the security deposit is extinguished, pursuant to sections 24 and 36 of the Act.

Section 38(5) of the Act states that, if a landlord's right to claim against the security deposit is extinguished, the landlord may not enter into a mutual agreement with the tenant to retain the security deposit to pay for any liabilities or obligation of the tenant. The Act contains no other consequences for the extinguishment of the right to claim against the deposit.

As the tenant has not provided the landlords with a forwarding address, the landlords do not have an obligation to return the deposits to the tenant and the doubling provision set out at section 38(6) of the Act cannot apply.

Despite the extinguishment, section 72(2) permits an arbitrator to order that a landlord may retain a deposit in partial satisfaction of a monetary order made in their favour. In the present circumstances, I find it appropriate to make such an order.

Pursuant to section 72(1) of the Act, as the landlords have been partially successful in their application, I order that the tenant reimburse the landlords their filing fee.

### **Conclusion**

I dismiss the tenant's application, in its entirety, without leave to reapply.

The landlords have been partially successful in their application. Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlords \$1,299.48, representing the following:

Description	Amount
Balance of April rent	\$1,375.00
Unpaid utilities	\$724.48
Filing fee	\$100.00
Security and pet damage deposit credit	-\$900.00
<b>Total</b>	<b>\$1,299.48</b>

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 13, 2022

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Residential Tenancy Branch