



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord and both named tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the hearing the landlord submitted that all evidence has been provided to the tenants, which was not disputed by the tenants. However, the landlord also submitted that only some of the tenants' evidentiary material had been provided to the landlord, specifying that the landlord received only photographs on May 18, 2022. Some of the tenants' evidence shows the photographs uploaded to the Residential Tenancy Branch site on May 18, 2022. The tenants submitted that the rest of the evidence was sent to the landlord by email on August 2, 2022 and the parties had earlier agreed that email was an acceptable method of service, which was not disputed by the landlord. The tenants also requested that the landlord reply that the August 2, 2022 evidence was received, but the landlord did not reply.

When providing evidence by email, the onus is on the serving party to ensure that the material has been received by the recipient; not to ask for a reply and receive none and assume it was received. Therefore, I decline to consider any of the tenants' evidentiary material except for the photographs uploaded to the Residential Tenancy Branch site on May 18, 2022. All of the landlord's evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 1, 2021 and ended on December 31, 2021; the tenants gave notice to vacate the rental unit. Rent in the amount of \$1,500.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On April 3, 2021 the landlord collected a security deposit from the tenants in the amount of \$750.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlord. The rental unit is a strata condominium apartment, and a copy of the tenancy agreement has been provided for this hearing. No move-in or move-out condition inspection reports were completed.

The landlord further testified that on September 9, 2021 the unit below suffered water damage, but no one told the landlord. The landlord received a bill in the amount of \$8,140.31 with a letter from the strata dated November 2, 2021 stating that after inspections and restorations were conducted, it was confirmed that the rental unit above was the source of the water loss to the unit below, charging back that amount to the landlord. The landlord also received a Completion Photo Report, a copy of which has also been provided for this hearing, indicating that the claim was created on September 9, 2021 due to water damage in unit 201 due to possible leak in unit 301. Also provided is an Invoice in that amount from the restoration company dated October 15, 2021.

The tenancy agreement says that the tenants have to pay for damages caused by them, and they were the only ones there. There was no faulty pipe or anything and the damage was extensive to the lower unit. People had entered the rental unit at the time to look for a cause and spoke to the tenants, who ought to have told the landlord. The landlord didn't hear about it until receiving the bill from the strata. The strata suspected it was caused by the tenants, but the landlord doesn't know. There was no damage to the inside of the rental unit, but the insulation under the floor of the rental unit was wet, and the rental unit only was above the affected unit.

**The first tenant** (CO) testified that in reading the report details, the rental unit had been inspected and no leak or water damage was found. During repairs, if there was any

damage to the rental unit, they would have repaired the floors as well, not just the damage in the unit below.

At the request of the occupants of the unit below, a plumber arrived at the rental unit who checked for moisture with a moisture detection meter, and said there was no water, and the tenant didn't see any water. That is also included in the plumber's report. The tenant gave his phone number to the restoration company and to the occupants in the unit below in case they had any updates, and to communicate if the tenant noticed water coming from somewhere.

The tenants' photographs show an old building, with tarps, cracks, moss collection and water collection on the roof, as well as other exterior damage. The first photograph is a tarp over the balcony of the unit below; the entire siding of the building is being replaced. The photograph was taken on November 23, 2021 and the tarp had been there for about 4 months at that time.

**The second tenant** (MK) testified that on September 9, 2021 the tenants were out for most of the day and upon return were told by the occupants of the lower unit that they had a leak and asked the tenants to check for water, which they did. Less than an hour later a plumber came to check who said that no water was located and the detector was not going off at all.

### Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, there is no doubt that the landlord has been provided with a large bill by the strata, and therefore I find that the landlord has suffered a loss. The evidence also shows that the amount of the loss is \$8,140.31, and I find that the landlord has established elements 1 and 3 in the test for damages.

With respect to the 2<sup>nd</sup> element, there is no move-in or move-out condition inspection reports, and the landlord has absolutely no idea how the leak into the lower unit was

caused. I am not satisfied in the evidence that the tenants knew, until the plumber arrived, that there was any suggestion at the time that the leak came from the rental unit. Just because they lived there at the time does not mean that the tenants failed in any way to comply with the *Act* or the tenancy agreement.

I have also reviewed the reports, and I am not satisfied that any of the damages were caused by the tenants, considering the wear and tear on the building envelope, roof and tarps covering portions. I find that the landlord has failed to establish that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement and I dismiss the landlord's monetary claim.

The landlord currently holds a security deposit in the amount of \$750.00 as well as a pet damage deposit in the amount of \$300.00. A landlord is required to return a pet damage deposit and security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, or must make an application seeking to keep the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenants double the amount.

Further, the *Residential Tenancy Act* specifies that where a landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, the landlord's right to make a claim for damages against a security deposit or pet damage deposit is extinguished. A landlord may only claim against a pet damage deposit for damages caused by a pet.

In this case, the landlord makes no claim for damages caused by a pet and has not returned the pet damage deposit to the tenant, testifying that the landlord received the tenants' forwarding address in writing on December 17, 2021 and the tenancy ended on December 31, 2021. Because the landlord failed to ensure that the move-in and move-out condition inspection reports were completed, I find that the landlord's right to claim for damages against the deposits is extinguished, and since the landlord has not made any claim other than damages, the landlord is ordered to repay the tenants double the amount, or \$2,100.00 ( $\$750.00 + \$300.00 = \$1,050.00 \times 2 = \$2,100.00$ ). I grant a monetary order in favour of the tenants in that amount. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,100.00.

This order is final and binding and may be enforced.

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: September 29, 2022

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Residential Tenancy Branch