



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCL-S, MNDL-S, FFL**

### **Introduction**

This hearing dealt with the Landlords' Application for Dispute Resolution, made on February 23, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find the above-mentioned documents were sufficiently served pursuant to section 71 of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

1. Are the Landlords entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security and pet damage deposits, pursuant to Section 38, and 72 of the *Act*?

3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 1, 2021. During the tenancy the Tenants were required to pay rent in the amount of \$2,100.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,050.00 and a pet damage deposit in the amount of \$1,000.00, for a total of \$2,050.00 in deposits currently being held by the Landlords. The tenancy ended on February 1, 2022 in compliance with a Two Month Notice for Landlord's Use of the Property.

The parties testified that the Tenants provided the Landlord with their forwarding address by text on February 3, 2022. The Landlord's stated that the text only contained a partial address. The Landlords stated that they responded to the Tenants indicating that they preferred the Tenant's forwarding address be provided in writing by email. The Tenants stated that text had been their preferred method of communication during the tenancy, however, the parties agreed that the Tenants provided their forwarding address to the Landlords by email on February 16, 2022, which was received by the Landlords on the same date.

The Landlords are claiming for \$250.00 relating to unpaid utilities. The parties agreed that the Landlords purchased the rental property in October 2021. The parties agreed that at the time, the Tenants were required to pay rent in the amount of \$2,100.00 and were responsible for maintaining the yard. The Tenants were also responsible for paying 60 percent of the utilities as there were two other suites in the rental property. The parties testified that they came together and agreed that the Tenants would pay \$2,350.00 which would include utilities, and they would no longer be required to maintain the yard. Both parties agreed to these amended terms.

The parties agreed that the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, for which the Tenants are entitled to the equivalent of one month rent as compensation. The Landlords stated that the Tenants were therefore not charged their last month of their tenancy, however, the Landlords feel as though it is fair to charge the Tenants utilities that they would have paid them under the previous agreement. The Tenants stated that they did not consent to these terms. The Landlords provided the utility bills in support.

The Landlords are claiming for \$924.00 in relation to the rental unit requiring further cleaning at the end of the tenancy. The Landlords stated that the Tenants left the rental unit on February 1, 2022 in compliance with the Two Month Notice. The Landlords stated that they had planned to move upstairs immediately, however, once they attended the rental unit, they found that it required further cleaning. The Landlords stated that they hired a cleaner at a cost of \$924.00. The Landlords provided a receipt and pictures of the rental unit in support.

The Tenants stated that they left the rental unit reasonably clean. The Tenants provided a statement from individuals who helped them clean the rental unit at the end of the tenancy. The Tenants stated that the Landlords did not provide them an opportunity to conduct a move out condition inspection, at which point they could have corrected any deficiencies. As such, the Tenants feel as though they are no responsible for this cost.

### Analysis

Based on the oral testimony and documentary evidence, 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 Landlords 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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or

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

### **Changes to tenancy agreement**

**14** (1)A tenancy agreement may not be amended to change or remove a standard term.

(2)A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

The Landlords are seeking compensation in the amount of \$250.00 relating to unpaid utilities. I accept that the parties agreed to amend the tenancy agreement to increase the rent from \$2,100.00 to \$2,350.00 which included the utilities in the rent, and released the Tenants from the responsibility of maintaining the yard. I find that the monthly rent became \$2,350.00 based on this agreement.

The parties agreed that the Tenants were entitled to compensation equivalent to one month of rent as the Landlords served them a Two Month Notice for Landlord's Use. I find that the Landlords are not permitted to change the terms of the agreement without the agreement from the Tenants. As such, I find that the Tenants were entitled to compensation in the amount of \$2,350.00. The Landlords are not entitled to compensation for unpaid utilities as they were included in the rent during the last month of the tenancy. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming for cleaning costs in the amount of \$924.00 as the Tenants did not leave the rental unit reasonably clean. The Tenants stated that the Landlords did not offer them an opportunity to conduct a move out inspection. Nor did the Landlord return the Tenants' deposits within 15 days following their receipt of the Tenants' forwarding address by text on February 3, 2022.

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.

In this case, the Tenants argument that the Landlords extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims are also related to loss, therefore whether they extinguished or not has no bearing on the outcome of the current Application.

I find the Tenants provided the Landlord with their forwarding address by text on February 3, 2022. I find that the Tenants did not provide a complete forwarding address as it did not contain the city or postal code. I find that it is reasonable for the Landlords to have requested the Tenants re-send their complete forwarding address in writing which they received on February 16, 2022 by email.

Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until March 3, 2022, to repay the deposits or make a claim against them. I find that the Landlords submitted their Application on February 23, 2022 which is within the time limit permitted under the *Act*. Accordingly, I find the Tenants are not entitled to the return of double the amount of the deposit.

With respect to the Landlord's cleaning claim for \$924.00, I find that the receipt provided by the Landlords does not describe what area of the rental property was cleaned. I accept that there were multiple units in the rental house. I find that the pictures provided by the Landlords show that the rental unit required further cleaning in several areas, however, not to the extent of \$924.00.

The Residential Tenancy Policy Guideline #16 sets out that where the value of the damage or loss is not straightforward, an arbitrator may award nominal damages for intangible damage or loss, where it has been proven that an infraction of a legal right has occurred. As a result, I award the Landlords a nominal amount of **\$200.00** for cleaning.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain \$300.00 from the \$2,050.00 security and pet damage deposits held in satisfaction of the claim ( $\$2,050.00 - \$300.00 = \$1,750.00$ ).

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,750.00, which represents the remaining balance of their security and pet damage deposits less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$300.00 which has been deducted from the security and pet damage deposits. The Tenants are granted a monetary order in the amount of \$1,750.00 which represents the remaining balance of the Tenants' deposits. The order should be served to 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: October 18, 2022

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Residential Tenancy Branch