



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- a monetary order for damage or monetary loss pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

YK appeared for the landlord, while KS represented the tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The tenants did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation as requested for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on June 30, 2021, and ended on June 30, 2022. Monthly rent was set at \$3,350.00, payable on the first of the month. The landlord holds a security deposit of \$1,625.00 and a pet damage deposit of \$725.00 for this tenancy.

The landlords filed this application for a monetary order totaling \$3,500.00 for losses associated with the tenants' failure to return the rental unit in reasonably clean and undamaged condition. The landlords submitted photographs, an audio recording the move-out inspection and videos in support of their claim.

The landlord confirmed that no move-in or move-out inspection reports were completed for this tenancy. The landlord testified that the tenants and their dog caused considerable damage to the rental unit, including scratches to the floor and walls. The landlord argued that the tenants' dog was not properly trained, and would urinate inside the rental unit, as shown by the video submitted. The landlord submits that the photos show that the rental unit was not properly cleaned, and that the damage caused was considerable. The landlord testified that the tenants also broke the refrigerator and dishwasher during this tenancy. The landlord testified that a plumber had inspected the dishwasher, and determined that the damage was due to improper use, and not wear and tear. The landlord did not submit any receipts or invoices, but argued that the amount of damage exceeds the tenants' deposits.

The tenants dispute that they had caused any damage in the rental unit beyond regular wear and tear. The tenant dispute damaging the appliances, and argued that they were functioning when they had moved out. The tenant argued that their dog does not normally pee inside the unit, but did so during the inspection as the dog was not accustomed to being around different people.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlords must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claims on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the Act stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenants dispute causing any damage beyond regular wear and tear.

Sections 23 and 35 of the Act require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the Act is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the Act.

As noted in Residential Policy Guideline #17:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:*

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

*A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlords' claims. Although the landlords submitted photos to show the "before" and "after" condition of the rental unit, it is undisputed that the landlords failed to provide completed move-in and move-out inspection reports for this tenancy. In light of the disputed testimony and claims, I find that the landlords' evidence falls short in proving that the damage was indeed caused by the tenants or their dog during this tenancy beyond what could be considered regular wear and tear. The unit was not brand new, and the landlord confirmed that there were previous tenants who resided in the rental unit at some time. Taking in consideration that the party claiming the loss bears the burden of proof, I find that there is no way to determine exactly what damage occurred during this tenancy, and what the pre-existing condition of the home was. Although the landlords claimed that the tenants had caused the breakdown of the appliances due to misuse, and although the landlords referenced reports from contractors, the landlords did not provide these reports nor did they call any witnesses to testify, confirming that this was indeed the case.

The party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the landlords failed to support how they had calculated the amount claimed. The landlord did not provide any receipts, estimates,

invoices, or expert evidence to support the actual losses claimed, nor did the landlords provide an itemized monetary order worksheet to detail the breakdown of the losses claimed. For these reasons, I dismiss the landlords' claim for losses associated with damage to the rental unit without leave to reapply.

In addition to damage to the rental unit, the landlords also filed a monetary claim related to the tenants' failure to leave the rental unit in reasonably clean condition. I am satisfied that the photos submitted do show that the tenants failed to clean the properly clean the rental unit. I note that the landlord did not provide any supporting documents such as invoices, estimates, or receipts to support the amount of loss suffered due to the tenants' failure to properly clean the rental unit. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlords compensation in the amount of \$400.00 for the tenants' failure to properly clean the rental unit.

As the landlords' application contained some merit, I allow the landlords to recover the filing fee paid for this application.

The landlords continue to hold the tenants' security and pet damage deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlords retain a portion of the tenants' security and pet deposit in satisfaction of the monetary awards granted in this application. I order that the landlords return the remainder to the tenants, plus applicable interest. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$11.16 is payable as interest on the tenants' security and pet damage deposit from June 22, 2021 when the deposits were originally paid, until the date of this decision, March 28, 2023.

### **Conclusion**

I allow the landlords the following monetary claims: \$400.00 for cleaning and \$100.00 for recovery of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlords retain a portion of the tenants' security and pet damage deposit in satisfaction of the monetary awards granted. The landlords shall return the remainder to the tenants, plus applicable interest.

Item	Amount
Cleaning	\$400.00
Filing Fee	100.00

Less Security and Pet Damage Deposit Held, plus applicable interest	-2,411.16
<b>Amount to be returned to Tenants</b>	<b>\$1,911.60</b>

The tenants are provided with a monetary order in the amount of \$1,911.60 for the return of the remainder of their deposit. 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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: March 28, 2023

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Residential Tenancy Branch