



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenants applied on June 3, 2022 for:

- compensation for monetary loss or other money owed, in the amount of \$5,000.00;
- recovery of the security deposit and pet damage deposit, in the amount of \$1,430.00; and
- recovery of the filing fee.

On September 7, 2022, the tenants amended their application to:

- increase the amount of the claim for compensation for monetary loss or other money owed to \$10,000.00.

The hearing was attended by the tenants and the landlord. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

The landlord confirmed he received the tenants' materials amending their compensation claim from \$5,000.00 to \$10,000.00. Neither side raised an issue regarding service of the hearing materials.

### Preliminary Matter

The landlord testified that he represents the homeowner, with initials DL, whose name is recorded on the cover page. The tenants confirmed they are proceeding against VL.

At the conclusion of the hearing, the landlord asked me to consider hearing as a witness the tenants' previous landlord, if I thought their testimony would be relevant. The landlord submitted that the witness would provide testimony on how the tenants leave their rental unit untidy and don't take care of the lawn. As this relates to a past tenancy with a different landlord, I declined to hear from this witness.

### Issues to be Decided

- 1) Are the tenants entitled to compensation for monetary loss or other money owed, in the amount of \$10,000.00?
- 2) Are the tenants entitled to the return of the security deposit and pet damage deposit, in the amount of \$1,430.00?
- 3) Are the tenants entitled to the filing fee?

### Background and Evidence

While I have considered the presented 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 agreed on the following particulars regarding the tenancy. It began June 16, 2020; rent was \$2,800.00, due at the end of the month for the following month; and the tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00. Neither party provided a written tenancy agreement.

The parties agreed the landlord withheld \$1,730.00 of the tenants' deposits and returned \$1,070.00. The landlord testified he did not apply to retain a portion of the tenants' security or pet damage deposits.

The tenants testified they vacated the unit on May 15, 2022 and that during the move-out inspection on May 16, 2022, the parties agreed the tenants would return to the unit to do some painting, and would then return the key to the landlord. The tenant testified that the landlord then decided he would do the painting, and picked up the key from the tenants on May 17, 2022. The landlord testified that after the move-out inspection the

parties did not come to an agreement on how to change some of the paint colour in the unit. The landlord testified he picked up the key from the tenants on May 21, 2022.

### *Security and Pet Damage Deposits*

The tenants testified that both parties were present for the move-in inspection, and the tenants completed the inspection report and gave a copy to the landlord; the landlord agreed this was true. The tenants testified they participated in a move-out inspection and that the landlord gave them a copy of the inspection report. The tenants testified they provided the landlord with their forwarding address in writing in person when he visited on April 11, 2022; the landlord agreed this was true.

The tenants testified they did not agree to the landlord retaining any part of the security or pet damage deposits, but that they are seeking to recover only \$1,430.00 of the combined deposit amount of \$1,730.00 remaining after the landlord returned \$1,070.00.

The landlord testified he retained \$1,730.00 of the tenants' deposits because they owed \$250.60 for hydro and \$371.24 for gas. The landlord referred me to copies of unpaid BC Hydro and Fortis bills submitted as evidence. The landlord testified that the parties had agreed that the landlord would pay the utility bills, then give the bills to the tenants.

The landlord testified that the parties reached an oral agreement for him to retain \$300.00 for carpet damage. In a May 16, 2022 text to the landlord, the tenant referred to "as small piece of carpet" and wrote: "I have offered you \$300 because you don't like the colour we replaced it with." The tenant testified that their animals did not cause any damage to the home, other than the very small piece of carpeting that was already ruined by prior tenants, which the tenants replaced.

The landlord testified he retained the remainder of the \$1,730.00 for "pet damage and house damage," but presented no further evidence.

### *Compensation for Monetary Loss or Other Money Owed*

In support of their amended monetary claim for \$10,000.00, the tenants submitted an updated Monetary Order Worksheet. The Worksheet includes in the \$10,000.00 an amount of \$1,430.00 for recovery of the security and pet damage deposits.

The first two items total \$500.00 for carpet cleaning, and receipts are submitted in support. The tenant testified that one of her children had extreme allergy symptoms

while living in the rental unit, which were not present before the family moved in, and disappeared after the family moved out. Submitted as evidence is a note from the child's doctor, stating that the tenants had communicated concerns about the carpet in the basement, and that the basement bedroom was very cold. The letter stated that the tenant said the child's symptoms stopped once they moved out; the doctor stated that the child has never shown any signs of allergies before or after. Also submitted as evidence is a letter from the child's teacher, noting that the child had been experiencing nasal congestion and sneezing, which "almost stopped completely" once the family moved out of the rental unit.

The landlord testified that these expenses were the tenants', and part of a regular cleaning routine. The landlord submitted that the first carpet cleaning was for routine cleaning, and that the second was part of their move-out clean.

The next item is \$5,000.00 for time the tenants were away from work, trying to figure out how to serve the landlord regarding this dispute in a way acceptable to the Residential Tenancy Branch. The tenant testified that the landlord's address for service on the tenancy agreement and other documents "did not exist," but did not explain how they concluded the address did not exist and did not present the tenancy agreement as evidence. The tenant testified they spent days trying to find and serve the landlord, spending money on childcare and losing revenue from being off work. Submitted as evidence is a client letter noting the professional hourly rate of one of the tenants. The tenants' amendment states: "The owner falsified our lease and all legal documentation with a fake address, costing us hours of time away from work and family, mileage, consultation with a private investigator, title search to track him down. The address provided on all documentation from the landlord does not exist. The prior tenant confirmed this in their hunt for the owner over a dispute." Submitted as evidence is a video showing a street number and a range of unit numbers on a building, and a person states the name of the street. The addresses are recorded on the cover page of the decision.

The landlord testified that the tenants were trying to violate his privacy, and that he did not understand why they were so adamant about the proper notice address because the tenants had sent him a notice to end tenancy, so clearly had the address; the landlord quoted the address of the rental unit. The landlord submitted he got the tenant's claim package from the rental unit address. The landlord testified he had communicated clearly with the tenants on this matter.

The next item regarding the tenants' compensation claim is \$1,000.00, which the tenant testified is because of the cold temperature in the unit and the lack of maintenance in the unit overall, causing the tenants' three young children to have health problems while in the home. The Monetary Order Worksheet states the amount is for "son's care, sick and away from school," and references the previously mentioned letters from one of the children's doctor and teacher.

The landlord testified he cannot guarantee how the parents took care of their children. The landlord submitted he would not like his child living in conditions that were not "sanitized" and not to the child's benefit. The landlord testified he provided the house in sound condition.

The next item is \$100.00 for junk removal, and a receipt for \$263.66 is submitted in support. The tenant testified that most of the junk removed was theirs, but at least \$100.00 of the bill was to remove the landlord's junk, though the landlord did not agree on this value.

The landlord submitted that the date of the junk removal was May 16, the day after the tenants' notice date to end tenancy, and that legally they should not have returned to do any of the job after they moved out, but that the landlord gave them extra time to take care of the house. The landlord testified the tenants were not entitled to \$100.00 from him for junk removal, and that there were still belongings of the tenants' left behind after the junk removal company visited.

The Worksheet lists an amount of \$230.30 for loss of use of the back deck as it was unsafe, and references photos of the deck and emails to the owner. The tenants' amendment states that they mentioned the state of the deck to the landlord on several occasions, but nothing was done to address it. Two photos are submitted as evidence for this item, showing an aged wooden fence and a wooden deck. When asked how the tenants came to the amount of \$230.30, the tenant said they were trying to round up to the maximum amount they could file for.

The landlord submitted there was no reasonable explanation as to why the tenants brought up the condition of the back deck. The landlord submitted he cannot respond to untruthful accusations.

The next item on the Worksheet refers to Fortis, hydro bills, and bank statements, and is for \$500.00 for "lack of maintenance to home." The tenant testified that the house had old, thin windows, resulting in the home being very cold, especially in the basement,

requiring the tenants to keep the heat very high, incurring high utility bills. BC Hydro and Fortis bills are submitted as evidence. When I asked the tenant how they came to the amount of \$500.00, the tenant submitted that \$500.00 was a low amount they sought so as to not go above the permitted amount for the claim.

The landlord submitted that he could not understand why a person would want to turn up the heat in a basement on a hot summer day.

The tenants have claimed \$500.00 for stress and anxiety due to pressure from the landlord to lie to the municipality. A letter from tenant RD's doctor is submitted as evidence and states that the tenant and her family "experienced intensified anxiety and stress in relation to their housing situation."

The landlord responded that it works both ways, and that he has also experienced stress as a result of the tenancy.

The last amount claimed is \$739.85 for moving costs. The tenant testified that they should not have had to move, and that the landlord had said he would move in but did not. Receipts for moving boxes and movers are submitted as evidence. The tenant testified they were not served with a Two Month Notice to End Tenancy for Landlord's Use of Property, but agreed to move out.

Regarding this expense, the landlord testified that it was the tenants who gave him notice they would be moving out, and gave him short notice. The landlord testified that the tenants had told him May 15 would be the final date, but that the tenants did not move out completely by May 15.

The landlord testified he had agreed to a one-time \$1,000.00 rent reduction in February 2021 in response to all the concerns the tenants had raised; the tenants testified that was regarding an unrelated matter. When I asked the landlord how this was relevant to the tenants' claims, he submitted that it demonstrates his willingness to co-operate with the tenants to make the house to their satisfaction.

### Analysis

The tenants have made a claim for the return of the security and pet damage deposits and for compensation for monetary loss or other money owed.

Based on the testimony of the parties, I find the tenancy ended on May 16, 2022, the date of the move-out inspection, and the date the tenants had a junk removal company remove items from the property.

### *Security and Pet Damage Deposits*

The parties agree the landlord returned \$1,070.00 of the tenants' \$2,800.00 security and pet damage deposits, and withheld \$1,730.00.

The tenants testified they did not agree for the landlord to keep any part of the security or pet damage deposits, but that they are seeking to recover only \$1,430.00 of the combined deposit amount of \$1,730.00 remaining after the landlord returned \$1,070.00.

The landlord testified that the parties reached an oral agreement for him to retain \$300.00 of their deposits for carpet damage. In a text to the landlord, submitted as evidence, the tenant wrote, referring to a piece of carpet: "I have offered you \$300 because you don't like the colour we replaced it with." The landlord presented no documentary evidence in support of his claim that the parties reached an agreement for him to retain \$300.00 of the deposits.

Neither party presented as evidence a copy of the inspection report. I note that the landlord is obligated to complete the move-in and move-out inspection reports in compliance with Residential Tenancy Regulation section 20. If the landlord reached an agreement with the tenants about \$300.00, it should have been recorded on the move-out inspection report.

The landlord testified he did not apply to retain a portion of the tenants' security or pet damage deposits.

Section 38(1) states:

**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.

Section 38(6) states:

- (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.

The parties agreed that the tenants provided the landlord with their forwarding address in writing on April 11, 2022.

As the landlord has not repaid in full or made a claim against the security and pet damage deposits within 15 days of the date the tenancy ended, I find that in accordance with section 38 of the Act, the landlord is required to pay the tenants double the amount of the security and pet damage deposits, less the amount the landlord returned ( $2,800 \times 2 = 5,600$ ;  $5,600 - 1,070 = 4,530$ ). The tenants are entitled to a monetary award of \$4,530.00. This calculation follows example A from the Residential Tenancy Policy Guideline 17. [Security Deposit and Set off](#).

#### *Compensation for Monetary Loss or Other Money Owed*

The tenants are seeking compensation from the landlord in the amount of \$10,000.00. As their Monetary Order Worksheet documents that \$1,430.00 of that amount is for recovery of the security and pet damage deposits, this part of the decision will consider only whether the tenants are entitled to the remaining \$8,570.00 ( $10,000 - 1,430 = 8,570$ ).

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, 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, the onus is on the tenants to prove entitlement to a monetary award.

Policy Guideline 16 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 tenants have claimed \$500.00 for carpet cleaning, submitting that the landlord should be responsible for this cost as one of the tenants' children had extreme allergy symptoms, only while living in the rental unit. Submitted in support is a note from the child's doctor and a note from the child's teacher. Both echo the tenants' observation of the pattern of the child's extreme allergy symptoms. However, as the tenants have not provided testimony or presented documentary evidence that demonstrates that their carpet cleaning expenses resulted from a failure of the landlord to comply with the Act, Regulation, or tenancy agreement, I find they are not entitled to recover the \$500.00 for carpet cleaning.

The tenants have claimed \$5,000.00 for time spend away from work to locate and serve the landlord regarding this dispute because the landlord's address for service on the tenancy agreement and other documents did not exist. The tenants testified that they spent days trying to find and serve the landlord, spending money on childcare and losing revenue from missing work, and submitted as evidence a client letter noting the professional hourly rate of one of the tenant. The tenants' amendment listed additional related expenses, such as for a private investigator, but gave no dollar amounts.

Section 13(2)(e) of the Act states that a tenancy agreement must include the address for service and telephone number of the landlord or the landlord's agent. The landlord

did not point out at any time during the hearing or present evidence demonstrating how he had complied with this section of the Act. I accept the tenant's testimony that they did not know where to serve documents to the landlord.

Even if I accept that the landlord breached section 13(2) of the Act, the tenants must demonstrate the value of their loss from this breach and how they mitigated their loss. The tenants have claimed that they suffered a loss of \$5,000.00 due to the landlord's non-compliance, but did not provide a breakdown of how they came to the amount of \$5,000.00, such as explaining how many hours they spent, or explaining why they would have to pay for childcare while trying to determine the landlord's address for service, but not if they were working at their career. Therefore, I find the tenants are not entitled to the \$5,000.00 sought because they have failed to prove the amount of their loss.

The tenants have claimed \$1,000.00 due to the cold temperature in the unit and the lack of overall maintenance in the unit causing the tenants' three young children to have health problems while living in the home. Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. The tenants did not provide specific information about what the temperature was in the unit, or about the maintenance issues, that would permit me to determine whether the landlord breached this section of the Act.

The Monetary Order Worksheet stated the amount is for "son's care, sick and away from school," and references the previously mentioned letters from one of the children's doctor and teacher. As stated earlier in the decision, while both of the letters from the child's doctor and teacher echo the tenants' observation of the pattern of the child's extreme allergy symptoms, because the tenants have not provided testimony or presented documentary evidence that demonstrates this expense was related to a specific failure of the landlord to comply with the Act, Regulation, or tenancy agreement, I find they are not entitled to recover the \$1,000.00. I note that the tenants also did not explain how they came to this dollar amount.

The tenants seek to recover \$100.00 for junk removal, and submitted in support a receipt for a greater amount. They testified that at least \$100.00 of their cost to haul away their junk was spent to remove the landlord's unwanted materials, but in the hearing the landlord denied this. No further evidence was presented by the tenants in support of this portion of their claim. As the tenants have not made clear how this

expense results from the landlord's failure to comply with the Act, Regulation, or tenancy agreement, I find the tenants are not entitled to recover this amount from the landlord.

The tenants testified they seek \$230.30 for loss of use of the back deck as it was unsafe, and submitted two photos in support. From the photos, it is apparent the fence and deck are aged, but the photos do not illustrate why the deck is not usable. The tenant testified the deck was rotten and therefore dangerous, but the landlord submitted that was not true. As previously referenced, section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. Based on the limited evidence provided by the tenants, I find they have failed to prove that the landlord contravened section 32 of the Act. Therefore, I find the tenants are not entitled to \$230.30.

Additionally, as the tenant testified they came to the amount of \$230.30 as they were trying to round up to the maximum amount they could file for, I find this portion of the tenants' claim fails as the tenants have not demonstrated the value of the loss of use of the deck.

The tenants have claimed \$500.00 for lack of maintenance to the home, and submitted BC Hydro and Fortis bills in support. The tenant testified that the house had old, thin windows that had not been replaced, resulting in the home being very cold, especially in the basement, requiring the tenants to keep the heat very high, incurring high utility bills. I again must consider section 32(1) of the Act. While it is not ideal to have old windows that may permit more heat to escape during cold weather, the tenants have presented insufficient evidence to prove that the landlord's failure to replace the old windows is a breach of section 32 of the Act. Therefore, I find the tenants are not entitled to the \$500.00 claimed.

The tenants have claimed \$500.00 for stress and anxiety due to pressure from the landlord to lie to the municipality. A letter from tenant RD's doctor is submitted as evidence and states that the tenant and her family "experienced intensified anxiety and stress in relation to their housing situation." As compensation for stress and anxiety is not contemplated by the Act, I find the tenants are not entitled to the \$500.00 claimed.

The tenants have applied for \$739.85 for moving costs. I find they are not entitled to these costs because they chose to move out.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are partially successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The tenants are entitled to a monetary order in the amount of \$4,630.00, comprising \$4,530.00 for the doubled security and pet damage deposits and \$100.00 for the filing fee.

### Conclusion

The tenants are granted a monetary order in the amount of \$4,630.00. The monetary order must be served on the landlord. The monetary order 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: March 15, 2023

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Residential Tenancy Branch