



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S

### Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on February 27, 2023, in which the Landlords requested monetary compensation from the Tenants in the amount of \$4,600.00 as well as authority to retain their security deposit towards any amounts awarded.

The hearing was conducted by teleconference at 1:30 p.m. on March 27, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Date and Delivery of Decision

The hearing of the Landlords' Application concluded on March 27, 2023. This Decision

was rendered on May 8, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

### Background and Evidence

The tenancy began May 1, 2022. Monthly rent was \$1,850.00, payable on the first of the month, and the Tenants paid a \$925.00 security deposit.

The Tenants failed to pay rent for February 1, 2023 following which the Landlords issued a 10 Day Notice to End Tenancy. The Tenants vacated the rental unit as of the effective date on or before February 10, 2023.

I the hearing before me the Landlords sought unpaid rent for February as well as loss of rent for March 2023 as they claim they were not able to re-rent the unit until April 1, 2023.

The Landlords also sought compensation for cleaning and repair costs incurred after the tenancy ended. In this respect the Landlords sought \$500.00 for the cost to repair water damage to the basement ceiling which they say was caused by the Tenants air-conditioner drip line. The Landlords also sought \$200.00 for the cost to clean, repair and paint damage to the walls and a window frame. In support of these claims they also provided photos of the damage to the ceiling.

The Landlord, H.D., stated that he personally repaired and painted the tiles as the quote he obtained from a painter was \$800.00. By doing it himself the Landlord reduced the cost of this repair to \$200.00 for his time and materials.

The Landlords also sought \$30.00 in compensation for the cost to repair the door and replace the lock which was damaged by the Tenants and appeared to have been kicked. A photo of the damage was provided in evidence.

The Landlords also sought the sum of \$20.00 to reattach a closet door. A photo of the damage was provided in evidence before me.

The Landlords also claimed the cost to replace the kitchen tap in the amount of \$150.00 as it was broken at the time the tenancy ended. He stated that the Tenants did not tell him there was an issue with the tap, but rather simply turned the water off.

The Landlords also sought the cost to repair and paint the bedroom walls which appeared to be damaged by furniture, as well as cat faeces. H.D. also testified that there was cat feces caked on the walls and floors which he had to scrape off. For both repairing and painting the walls and scraping the floor the Landlord sought the sum of \$100.00.

The Landlords also sought \$50.00 for S.D.'s time to clean a sticky liquid which was leaking from the rental unit to the lower unit and appeared to be coming from between the hardwood flooring or through the heating vent.

In response to the Landlord's testimony and submissions, the Tenant, T.W. testified as follows.

In terms of the request for February and March rent, the Tenant stated that they moved out on February 3, 2023 as they were told the Landlord wanted them out. He stated that they did the move out inspection on February 10, 2023 as they did not feel safe coming to the rental unit earlier as they felt threatened. T.W. confirmed that the Tenants opposed the Landlords' request for March rent as they had moved out by this time.

The Tenants also opposed the Landlords' claim for cleaning and repairs. T.W., stated that the rental unit was a very old home. He denied causing the damage to the bedroom door and lock and said there was no cat faeces in the spare room when they swept and mopped the floor.

In terms of the kitchen faucet, T.W., stated that the faucet began leaking, but this occurred after an altercation with the Landlords, and they didn't address this issue as they did not want to have any further conflict.

In terms of the water leaking on the door, T.W. stated that this could have been water from a plant, and he was not sure why it was sticky, but noted it would have been easily cleaned up.

Although T.W. initially testified that they participate in a condition inspection on February 10<sup>th</sup>, 2023, he then claimed the Landlord did not perform a move out condition inspection and simply stopped talking to them.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

#### **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The Tenants were obligated to pay monthly rent in the amount of \$1,850.00 payable on the first of the month. This tenancy ended as a result of the Tenants failing to pay rent as required. While the Tenants vacated the rental unit pursuant to the Notice, they were contractually obligated to pay rent as of the 1<sup>st</sup> of the month. As such I award the Landlords **\$1,850.00** in unpaid rent for the month of February 2023.

The Landlords claim they were unable to re-rent the rental unit until April 2023 and as such claim loss of rent for March 2023. I find the Landlords have provided insufficient evidence to support a finding they could not re-rent the unit for March 2023. Such evidence might include proof of their efforts to advertise or show the rental property to others. British Columbia is experiencing a rental housing crisis and it is well known that rental properties are in high demand. When a Landlord claims they were unable to re-rent a unit and mitigate their rental losses, the onus is on them to prove the unit could not be rented sooner. In this case I find the Landlords have failed to prove the unit could not have been rented for March 2023 and I therefore dismiss their claim for related compensation.

The Landlords claim compensation for cleaning and repairs related to the rental unit. The Tenants deny damaging the unit and claim it was cleaned sufficiently when they moved out.

As noted above, a tenant is required to leave a rental unit reasonably clean. Based on the photos submitted, I find that some minor cleaning was required. Photos submitted by the Landlords also confirm that there were also repairs required; including replacement of ceiling tiles, repair to a door lock and replacement of a kitchen faucet. I find the amounts claimed by the Landlords to be excessive when compared to the photographic evidence filed and the condition of the rental unit as depicted in those photos. I therefore award the Landlords the nominal sum of **\$500.00** as compensation for the cleaning and repairs costs.

As the Landlords' claims have merit, I award them recovery of the **\$100.00** filing fee for a total award of **\$2,450.00**. The Landlords may retain the Tenants \$925.00 security

deposit and are entitled to a Monetary Order in the amount of **\$1,525.00**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlords claim for monetary compensation from the Tenants is granted in part. They are entitled to the sum of \$2,450.00, may retain the Tenants deposit and are granted a Monetary Order for the balance of **\$1,525.00**.

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: May 8, 2023

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Residential Tenancy Branch