



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNRL-S, FFL**

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for unpaid rent or utilities pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord MH and tenants AK and BC appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

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

1. Is the landlord entitled to a monetary order for compensation for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced January 1, 2023, on a month-to-month basis. Rent was \$1,650.00 per month due on the first of the month. A security deposit of \$750.00 is still held in trust by the landlord. The tenancy ended February 28, 2023.

The landlord testified that the tenants gave her written notice to end the tenancy on February 24, 2023, for February 28, 2023. She was unable to re-rent the rental unit for the month of March 2023 as the notice was too short. The landlord is seeking rent for the month of March as the tenants did not give 30 days notice. The landlord is also seeking to retain the security deposit as partial compensation for the unpaid rent.

The tenants stated that they believed they were forced to end the tenancy on short notice due to flooding and leaking within the rental unit that led to the presence of mold. The landlord attempted to fix the issue but was unsuccessful. The tenants provided videos of water leakage along the window, video of the flood, and video of the mold. The tenants also produced a note from a physician in evidence recommending that their child be removed from the rental unit for health reasons. The physician letter was dated after the tenants ended the tenancy.

The tenants provided in evidence a 23 page summary of the issues that they experienced in the rental unit including photos and text messages between themselves and the landlord. The tenants testified in the hearing that the main reason they left the rental unit was the leaking window, which was also noted in their 23 page evidence summary as the main issue which caused them to end the tenancy. The tenants produced a text message exchange between the landlord and tenants, a portion is reproduced:



The tenants were asked whether any of the following reasons to withhold rent applied to them:

1. The security deposit taken was more than one half of the monthly rent pursuant to section 19 of the Act
2. The tenants received a notice to end tenancy pursuant to section 49 of the Act
3. An arbitrator previously issued an order allowing the tenants to withhold rent pursuant to section 65 of the Act
4. The landlord consented to the tenants withholding rent
5. The tenant paid for emergency repairs to the rental unit pursuant to section 33 of the Act
6. There was an unlawful rent increase pursuant to section 43 of the Act

The tenants answered no to each question.

### Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide

evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

Section 26 of the Act states in part:

**26** (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act states in part:

**45** (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I have no evidence before me that the landlord failed to comply with a material term of the tenancy agreement and further failed to correct it within a reasonable time after receiving written notice. I have reviewed the text messages between the tenants and landlord provided in evidence. The text messages detail issues with the rental unit. All messages received a prompt response from the landlord and show attempts by the landlord to correct the issues when the tenants complained. The last issue of window leaks was raised in writing with the landlord but the landlord was not given a timeline or a reasonable opportunity to correct the issue. The tenants stated in the exchange that they were “just letting you [landlord] know”. After the leaks were discovered, the tenants immediately ended the tenancy giving only four days notice to the landlord.

I find that the landlord fixed or made reasonable efforts to fix the issues with the rental unit that the tenants communicated to the landlord. I further find that the tenants did not

give the landlord proper written notice to fix the window leaks and therefore ended the tenancy without giving the landlord proper notice as required under section 45 of the Act. I find that the landlord is entitled to compensation in the amount of \$1,650.00.

As the landlord is successful in their application, they are also entitled to recovery of the \$100.00 filing fee for the application. Under the offsetting provisions of Section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted a monetary order in the amount of \$1000.00 for unpaid rent and the filing fee as follows:

<b>Claim</b>	<b>Amount</b>
One month rent	\$1,650.00
Filing fee	\$100.00
Security deposit	(\$750.00)
<b>Total</b>	<b>\$1,000.00</b>

The monetary order must be served on the tenants. 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: May 24, 2023

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Residential Tenancy Branch