



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL, MNDL-S, MNDCL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlords applied on March 9, 2023 for:

- recovery of unpaid rent and/or utilities;
- compensation for damage caused by the tenants, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit;
- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

Those present 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.

Neither party raised an issue regarding service of the hearing materials.

### Issues to be Decided

- 1) Are the landlords entitled to recover \$1,729.40 for unpaid rent and utilities?
- 2) Are the landlords entitled to compensation in the amount of \$4,760.00 for damage caused by the tenants, their pets, or their guests to the unit or property?
- 3) Are the landlords entitled to compensation in the amount of \$1,279.23 for monetary loss or other money owed?
- 4) Are the landlords 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 respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. The tenancy began August 24, 2022 and the tenants vacated the unit on March 5, 2023; rent was \$2,800.00, due on the first of the month; and the tenants paid a security deposit of \$1,400.00, which the landlords still hold.

The tenancy agreement submitted as evidence states that the tenancy was for a fixed term from September 1, 2022 to August 31, 2023.

The parties agreed that no move in condition inspection was completed at the beginning of the tenancy, and that the tenants participated in a move out inspection but were not given a copy of the move out condition inspection report. The parties agreed that the tenants did not provide the landlords with a forwarding address in writing.

The landlords testified that the tenants agreed in writing for the landlords to retain the security deposit, referring me to an email submitted as evidence, dated January 28, 2023. The tenants testified that the email was merely a proposal for how the parties might work out the finances at the end of the tenancy, which included a conditional offer for the landlords to retain the security deposit, but that the landlords did not accept the tenants' proposal.

In the email, the tenants stated they are going to make a proposition, asked the landlords if they agree to it, and outlined the proposal, which included the landlords retaining the security deposit as compensation for their "re-renting efforts etc." and that the tenants would vacate the unit by March 6. The landlords respond, stating that they did not agree with the tenants' proposal.

### *Unpaid rent and utilities*

The landlords testified that the tenants broke the fixed term tenancy agreement.

The landlords seek to recover unpaid rent of \$1,288.77 for March 1 to 14, 2023 as a new tenant moved in March 15, 2023. The landlords seek to recover \$440.64 for the unpaid 70 percent of the internet for September 13, 2022 to March 12, 2023. A "monies

owed” document, an “internet split” document, and internet bills are submitted in support. The monies owed document states that the tenants owe \$440.64 for their share of the internet from September 13, 2022 to March 12, 2023, while the internet split document states that the tenants owe \$221.37 for November 13, 2022 to February 12, 2023.

The landlords testified that per the tenancy agreement addendum, the tenants agreed to pay 70 percent of the internet costs. The addendum, submitted as evidence, supports the landlords’ testimony.

The tenants are of the position that as they gave the landlords more than 30 days notice, and the house was in “very rough shape” when the landlords rented it to the tenants, the tenants are not responsible if the landlords were not able to rent out the unit again by a specific date. The tenants submitted they owe rent for only March 1 to 5, 2023. The tenants submit that based on the “internet split” document provided to them by the landlord, the tenants owe only \$291.37 for internet for November 2022 to March 2023. The tenants testified that the landlords owe them for hydro and water bills.

### *Damages*

The landlords seek \$4,760.00 as the damage to the unit on move out was more than what could be expected from wear and tear over a six month tenancy. The landlords testified that the tenants also permitted additional people to reside in the unit, which would increase the damage. The landlords submitted that the walls need repair and painting. Submitted as evidence is an email dated March 2, 2023 in which the tenants wrote that when they moved in the paint was already chipped and that their son may have “further open one or two of these chippings,” but that the tenants placed tape over the chipped areas to mitigate further damage. Submitted as evidence is an invoice in the amount of \$6,160.00 for wall preparation and painting the whole house. Submitted as evidence are photos of the condition of the unit following the tenancy.

The tenants testified that when they moved into the unit it was already extensively damaged, including the blinds, the walls, the shower tap, the shower door, and that the dishwasher did not work. The tenants submitted that they objected to the painting and restoration estimate as it was from a friend of the landlords’, not an objective third party. The tenants testified that their son may have made one or two spots of the chipped paint larger, but that otherwise the tenants had not damaged the unit.

The landlords testified that the tenants broke the shower tap and that the shower door had been fine at the beginning of the tenancy.

### *Monetary loss*

The landlords seek \$1,279.23 for the difference between the rent for the subject tenancy and the following tenancy, and for fees paid to a third party to facilitate showings and conduct the move out condition inspection.

The landlords testified that they had originally advertised the unit for \$2,800.00, the same amount the tenants paid, but reduced the rent to \$2,600.00 in order to get the unit rented quickly and mitigate their loss. The landlords seek to recover the rent difference of \$200.00 a month from March 15, 2023 to August 31, 2023. Submitted as evidence is a copy of the new tenancy agreement, showing that the new tenants pay \$2,600.00; an invoice for \$112.00 for the showings, and an invoice for \$56.00 for the move out condition inspection.

The tenants submitted that as the landlords rented out the unit at market rate and the tenants gave the landlords sufficient time to find new tenants, the subject tenants should not be responsible for the difference in the rent amounts.

The tenants testified that as they told the landlord the tenants could show the unit to prospective renters, there was no need for the landlord to spend money on a third party to show the unit.

The tenants submitted that the cost for conducting the move out inspection was the landlord's responsibility.

### Analysis

The parties agreed that they entered into a one-year fixed term tenancy agreement, beginning on September 1, 2022, the rent was \$2,800.00 per month, and that the tenants vacated the unit early, on March 5, 2023. The parties agreed that no move in condition inspection report was completed, and that the tenants did not provide the landlords with a forwarding address.

*Unpaid rent and monetary loss*

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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.

As explained in Policy Guideline 3 *Claims for Rent and Damages for Loss of Rent*, a tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the Act set out how a tenant may unilaterally end a tenancy agreement. Where a tenant vacates the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the unpaid rent to the date the tenancy agreement ended, and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

The landlord must do whatever is reasonable to minimize their loss. A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.

The parties agree the tenants did not pay rent for March 1 - 5, 2023. The landlords testified they were able to re-rent the unit for March 15, 2023, and that they reduced the rent by \$200.00 a month in order to get the unit re-rented promptly, mitigating their loss. A copy of the new tenancy agreement, at the reduced rent, is submitted as evidence.

I find the tenants did not pay rent for March 1 - 5, 2023, though they occupied the unit for that period. I find that the tenants failed to comply with the tenancy agreement as they vacated the unit before the end of the fixed term. I find that this failure resulted in a loss of rent for the landlords from March 6 – 14, 2023, and a loss of \$200.00 a month for

March 15 – August 31, 2023. Therefore, I find the landlords entitled to the following amounts:

- rent for March 1 – 5 and 6 – 14, 2023, in the amount of **\$1,264.52** ( $2,800/31 \times 14 = 1,264.52$ )
- \$200.00 for the difference in rent for March 15, 2023 to August 31, 2023, in the amount of **\$1,100.00** ( $100 + 200 \times 5 = 1,100.00$ )

I find that as the landlords' costs for **\$112.00** for arranging and conducting showings of the unit and **\$56.00** for conducting the move-out inspection were the result of the tenants failing to comply with the fixed-term tenancy agreement, the landlords are entitled to recover these costs from the tenants.

I reject the tenants' reasoning that the landlords did not need to spend money to show the unit as the tenants would be present. This does not account for the time spent to advertise the unit or otherwise identify potential tenants, or for the fact that it is not reasonable for a landlord to entrust this important task to outgoing tenants with which they are in dispute.

#### *Unpaid utilities*

The landlords seek to recover \$440.64 for unpaid internet charges for September 13, 2022 to March 12, 2023, and have submitted in support a "monies owed" document, an "internet split" document, and internet bills. The monies owed document states that the tenants owe \$440.64 for their share of the internet from September 13, 2022 to March 12, 2023, while the internet split document states that the tenants owe \$221.37 for November 13, 2022 to February 12, 2023.

The tenants submit that based on the "internet split" document provided to them by the landlords, and the amount due for the last internet bill, the tenants owe the landlords only \$291.37 for internet for November 2022 to March 2023.

The landlords did not present evidence to clarify why one document showed the tenants still owing internet fees from September 2022, and why the other shows the tenants owing internet fees from only November 2022.

As, in accordance with Rule 6.6, the onus to prove their claim falls on the landlords, I find the tenants owe the landlords **\$291.37** in unpaid internet fees.

### *Security Deposit*

The landlords testified that the tenants agreed in writing for the landlords to retain the security deposit, referring to an email in evidence. The tenants testified that the email was merely a proposal for how the parties might work out the finances at the end of the tenancy, including a conditional offer for the landlords to retain the security deposit, but that the landlords did not accept the tenants' proposal. Based on the documentary evidence, I find the tenants did not agree to the landlords retaining any part of the security deposit.

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.

I find the tenancy ended on March 5, 2023, the date the tenants vacated the rental unit.

The parties agreed the tenants did not provide the landlord with a forwarding address.

As the tenants have not yet provided a forwarding address, they are not entitled to recover double the security deposit from the landlord.

## *Damages*

Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not comply with the requirements of section 23 in offering the tenant two opportunities for an inspection and completing a condition inspection report.

As the parties agreed that a move in condition inspection was not done at the beginning of the tenancy, I find the landlords did not comply with section 23 of the Act, and consequently have extinguished their right to make a claim against the deposit for damages.

The landlords must discharge their evidentiary burden to show it is more likely than not that they are entitled to compensation for damages due to the tenants' breach of the Act.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

The landlords seek \$4,760.00 in damages to the unit, testifying that the damage to the unit is beyond wear and tear and that the tenants permitted additional people to reside in the unit, increasing the damage. The landlords submitted that the walls need repair and painting. Submitted as evidence is an invoice in the amount of \$6,160.00 for wall preparation and painting the whole house, and photos of the condition of the unit following the tenancy.

The tenants testified that when they moved into the unit it was already extensively damaged, including the blinds, the walls, the shower tap, and the shower door. The tenants testified that their son may have made one or two spots of the chipped paint larger, but that otherwise they had not damaged the unit.

Section 21 of the *Residential Tenancy Act Regulation* states that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As no condition inspection was conducted at the beginning of the tenancy, it is impossible for me to determine the condition of the unit at that time.



Therefore, I find the landlord is not entitled to compensation for damages because they have failed to prove any damage to the unit was the result of the tenancy.

### *Filing Fee*

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the landlords are partially successful in their application, I order the tenants to reimburse the landlords **\$100.00** for the filing fee.

In accordance with section 72 of the Act, I allow the landlords to retain \$1,400.00 of the tenants' security deposit in partial satisfaction of the amount owing.

I find the landlords are entitled to a monetary order as follows:

Rent for March 1-5 and 6-14, 2023	\$1,264.52
Difference in rent from March 15, 2023 to August 31, 2023	\$1,100.00
Third party to arrange and conduct showings	\$112.00
Third party to conduct move out condition inspection	\$56.00
Unpaid internet fees	\$291.37
Filing fee	\$100.00
Less the security deposit	-\$1,400.00
<b>Owed to landlords</b>	<b>\$1,523.89</b>

### Conclusion

The landlords are granted a monetary order in the amount of **\$1,523.89**, to 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 09, 2023

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Residential Tenancy Branch