



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      Tenants:      **MNDCT, FFT**  
Landlords:      **MNRL-S, MNDCL-S, FFL**

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the landlords' application pursuant to the Act for:

1. A Monetary Order to recover money for unpaid rent – holding security deposit under sections 38 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed – holding security deposit under sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. The landlords, D.R. and O.R.M, the tenants, S.B. and O.S., and their interpreter attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the tenants' Proceeding Package and evidence served on February 10, 2023, the landlords confirmed receipt, sufficiently served on February 13, 2023; and,
- the landlords' Proceeding Package and evidence served by registered mail on March 4, 2023, Canada Post Tracking Number on cover sheet of decision, the tenants confirmed receipt, deemed served on March 9, 2023.

Pursuant to Sections 71(2)(b), 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

Tenants:

1. Are the tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the tenants entitled to recovery of the application filing fee?

Landlords:

1. Are the landlords entitled to a Monetary Order to recover money for unpaid rent – holding security deposit?
2. Are the landlords entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security deposit?
3. Are the landlords entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on December 6, 2022. Monthly rent was \$2,900.00 payable on the first day of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the landlord. The tenants submitted that the landlords reimbursed them \$600.00 for December 1 to 5, 2022.

On December 8, 2022, the tenants told the landlords that they would have to move out of the rental unit because they needed to relocate to a different city for work. The tenants did not provide written notice to end the tenancy to the landlords.

The tenants wrote that they were forced to sign a Mutual Agreement to End a Tenancy, form #RTB-8 on December 29, 2022, agreeing that the end date of the tenancy would be December 31, 2022 at 1 p.m. Form #RTB-8 starts off stating:



**Mutual Agreement to End a Tenancy  
#RTB-8**

**NOTE:** This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

The tenants seek the return of their full security deposit. The tenants submit that the landlords did not note any damage to the rental unit. The tenants uploaded a note from the landlords stating:

*I, [male landlord's name] received & inspected the house located at [address]. The house is in good order & I do not have any concerns regarding any damages to it.*

*[male landlord's name]*

*Dec 31, 2022*

*[signed by male landlord]*

The tenants did not agree in writing that the landlords could retain any money from the security deposit.

The tenants stated they provided their forwarding address to the landlords in a January 9, 2023 email. The tenants did not provide a proof of service of their forwarding address.

The landlords testified that they did not receive the tenants' forwarding address until they received the tenants' Proceeding Package on February 10, 2023.

The landlords applied for dispute resolution to keep the security deposit on February 17, 2023.

The landlords provided evidence that they signed a new tenancy agreement on December 18, 2022 with new tenants which started on January 1, 2023. The agreed rental amount is \$2,700.00 per month. The landlords submit they are out of pocket for rent because the tenants left without 30 days notice.

The landlords uploaded the BC Hydro bill for the month of December 2022 totalling \$386.37. The landlords said because the tenants were not in the rental unit the whole month, they agree to waive \$86.00 from the total off the bill. The tenants already had given them \$150.00, and the landlords seek \$150.00 to cover the remaining portion of the bill.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Security deposit:**

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

The tenants testified that they provided their forwarding address to the landlords on January 9, 2023 by email. The tenants did not provide a proof of service of their forwarding address on the landlords. The landlords testified that they were alerted to the tenants' forwarding address when they received the tenants' proceeding package on February 10, 2023. Based on the testimonies of the parties, as well as the documentary evidence submitted, I find the following:

- The tenancy ended December 31, 2022.

- The tenants' forwarding address was provided to the landlords in writing and the landlords received this February 10, 2023.

February 10, 2023 is the relevant date for the purposes of section 38(1) of the Act. The landlords had 15 days from February 10, 2023 to repay the security deposit in full or file a claim with the RTB against the security deposit. The landlords applied to the RTB to keep part or all the security deposit.

It is not necessary to determine whether the landlords extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the Act because extinguishment only relates to claims for damage to the rental unit and the landlords have claimed for unpaid rent and utilities.

The landlords did not repay the security deposit but did file a claim with the RTB against the security deposit on February 17, 2023, within time. I find the landlords complied with section 38(1) of the Act and the tenants are not entitled to double the return of the security deposit.

### **Compensation:**

Section 7 of the Act 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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 landlords claim for unpaid utilities used by the tenants during their tenancy. The landlords uploaded the BC Hydro utilities bill proving the amount of this expense. The landlords agree to waive \$86.00 from the total off the bill which represents the days the tenants were not in the rental unit during the bill coverage period. The tenants already had given them \$150.00, and the landlords seek \$150.00 to cover the remaining portion of the bill. The uploaded tenancy agreement confirms that electricity is not included in the rent. I find the tenants do owe this remaining portion of \$150.00, and I grant compensation to the landlords for **\$150.00**.

The landlords seek to retain the security deposit totalling \$1,400.00 because the tenants had not provided them with 30 days written notice when ending their tenancy. The landlords found new tenants for their rental unit, and that tenancy began on January 1, 2023. The difference in the amount of rent the landlords lost for January 2023 was \$200.00.

The tenants testified that they were forced to sign a mutual agreement to end tenancy, in lieu of receiving rent compensation from the landlords for the first six days the tenants did not live in the rental unit. Form #RTB-8 states that "*Neither a Landlord nor a Tenant is under any obligation to sign this form.*" I find the tenants were not forced to sign the mutual agreement to end tenancy form.

The landlords' resourcefulness, or possibly the province's dire rental market, enabled the landlords to enter into a new tenancy agreement, on short notice from the tenants. Still the landlords experienced a \$200.00 loss in rent of which they would have received if the tenants had remained. I find the landlords are entitled to this difference in rent, and I grant the landlords **\$200.00** compensation for this proven loss.

I find since both parties are successful in these applications, each party must bear the costs of their application filing fees in this matter.

The tenants' monetary award is calculated as follows:

Items	Amount
Security deposit to tenants	\$1,400.00
Unpaid utilities to landlords	-\$150.00
Rent loss to landlords	-\$200.00
Monetary award to tenants:	\$1,050.00

### Conclusion

I grant a Monetary Order to the tenants in the amount of \$1,050.00. 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 of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 28, 2023

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Residential Tenancy Branch