



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Landlords: MNRL-S, MNDL-S, MNDCL-S, FFL  
Tenant: MNSDS-DR

### **Introduction**

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlords applied for:

- compensation of \$1,249.00 for unpaid rent or utilities pursuant to section 67 of the Act;
- compensation of \$851.88 to repair the damage that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67 of the Act;
- compensation of \$6,000.00 for monetary loss or other money owed pursuant to section 67 of the Act;
- authorization to retain the security deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the filing fee for the Landlords' application from the Tenant pursuant to section 72 of the Act.

The Tenant applied for return of double the security deposit in the amount of \$1,741.00 pursuant to section 38 of the Act.

The Landlords and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The parties confirmed receipt of each other's documents for dispute resolution.

### **Issues to be Decided**

1. Are the Landlords entitled to compensation for unpaid rent or utilities, damage to the rental unit, and monetary loss or other money owed?

2. Is the Tenant entitled to return of double the security deposit?
3. Are the Landlords entitled to recover their filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced with a previous landlord on October 31, 2020. Rent was \$1,761.00 due on the first day of each month. The Tenant paid a security deposit of \$867.50. The Tenant and the previous landlord did not complete a move-in inspection or condition inspection report.

The Landlords purchased the rental unit from the previous landlord and took possession on September 1, 2022.

The Tenant and the previous landlord attended a dispute resolution hearing on December 1, 2022 (file numbers referenced on the cover page of this decision). The arbitrator granted the previous owner an order of possession dated December 1, 2022, effective two days after service upon the Tenant. On December 2, 2022, the Tenant applied for a review consideration of the decision and orders granted. This application was denied on December 6, 2022.

The Landlords gave the following testimony and evidence:

- A writ of possession was obtained on December 21, 2022. Bailiffs were called to vacate Tenant from the rental unit on December 22, 2022. The Tenant overheld for 22 days in December 2022 and did not pay for the use of the rental unit during this time.
- The Landlords requested the Tenant to attend an inspection of the rental unit twice, but the Tenant did not attend. The Landlords used registered mail to notify the Tenant.
- On December 22, 2022, the bailiffs found garbage left behind in the rental unit, including dirty dishes in the kitchen sink. They also found damage such as crack in walls and broken blinds. The blinds by the entryway to the balcony was broken

and the chain had been ripped out entirely from its original position, making it unusable. The Landlords obtained a quote for the blinds. The toilet was also clogged with wet wipes, and the Landlords had to hire a plumber. The rental unit had been brand new when the Tenant first moved in. The Landlords provided photos showing the condition of the rental unit at the end of the tenancy.

- The Landlords had to pay for replacement visitor passes and key fobs which the Tenant did not return.
- The Landlords had planned to move into the rental unit on September 1, 2022. Because the Tenant did not vacate the rental unit on time, the Landlords had to find alternative housing. The Landlords paid rent of \$1,500.00 per month to a family member from September to December 2022.
- The Landlords received the Tenant's forwarding address in writing on January 5, 2023.

The Landlords seek compensation as follows:

Item	Amount
Compensation for Overholding from December 1 to 22, 2022 (\$1,761.00 × 22/31 days)	\$1,249.00
Plumbing Repair	\$236.25
Blinds Repair	\$225.00
Cleaning	\$275.63
Replacement Visitor Pass	\$40.00
Replacement Key Fob	\$75.00
Landlords' Own Rent from September to December 2022 (\$1,500.00 × 4 months)	\$6,000.00
Filing Fee	\$100.00
<b>Total</b>	<b>\$8,200.88</b>

The Tenant gave the following testimony and evidence:

- The Tenant vacated the rental unit on December 6, 2022. The last email that the Tenant sent to the Landlords was on December 7, 2022. The Tenant stopped responding to the Landlords after moving out of the rental unit. The Tenant had moved her items into storage. The Tenant provided a storage receipt dated December 5, 2022. The Tenant also provided a flight itinerary screenshot indicating that she left the country on December 12, 2022. The previous landlord had emailed the Tenant giving her a deadline of December 21, 2022 to move out.

- The Tenant had to leave quickly and did leave the dishes behind. The scratches and scuffs on the walls are normal wear and tear and not damage.
- The Tenant did not return the visitor pass, fob, or mail key as the Landlords did not ask for a walkthrough. The Landlords used email which was not proper notice. The Tenant did not feel comfortable returning to the rental unit.
- The Tenant was unsure about the blinds damage. The Landlords did not submit any photos of the blinds into evidence.
- The Tenant had paid rent to the Landlords until December 1, 2022.
- The Tenant sent her forwarding address to the Landlords via registered mail.

### Analysis

*1. Are the Landlords entitled to compensation for unpaid rent or utilities, damage to the rental unit, and monetary loss or other money owed?*

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

According to Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, 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.

I will address each of the items claimed by the Landlords as follows: (a) compensation for overholding, (b) plumbing and blinds repair, (c) cleaning, (d) replacement visitor passes and fob, (e) Landlords' alternative accommodations.

*a. Compensation for Overholding*

Under section 57(1) of the Act, an “overholding tenant” is a tenant who continues to occupy a rental unit after the tenant’s tenancy is ended. Under section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I find it is undisputed that the Tenant had paid the Landlords for use of the rental unit up to the end of November 2022.

I find the Landlords have not provided sufficient evidence to prove that the Tenant continued to occupy the rental unit up until December 22, 2022. However, I find the Tenant acknowledges that she had occupied the rental unit from December 1 to 6, 2022.

Therefore, I find that pursuant to section 57(3) of the Act, the Landlords are entitled to compensation for overholding by the Tenant for 6 days in December 2022. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$340.84 for overholding, or  $\$1,761.00 \times 6/31$  days.

*b. Plumbing and Blinds Repair*

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 32(3) of the Act states that a tenant 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.

I find the Landlords’ plumbing invoice indicates that the plumber had to repair the toilet as it was clogged with debris, including wet wipes. I am satisfied on a balance of probabilities that this repair was necessitated due to the actions or neglect of the Tenant. I find the amount claimed by the Landlords to be reasonable in the circumstances. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$236.25 for the plumbing repair.

I find the Landlords have not provided sufficient evidence regarding the amount claimed for blinds repair. I find the Landlords did not provide any photos clearly showing the damage or a written estimate to explain the necessary repairs and cost. Accordingly, I dismiss the Landlords’ claim under this part without leave to re-apply.

*c. Cleaning*

Based on the photos submitted by the Landlords, I am satisfied that the Tenant did not leave the rental unit reasonably as required under section 37(2)(a) of the Act. I find the Landlords have provided a cleaning invoice in support of the amount claimed. I find the amount claimed for cleaning to be reasonable in the circumstances.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$275.63 for cleaning.

*d. Replacement Visitor Passes and Fob*

Section 37(2)(b) of the Act states that when a tenant vacates a rental unit, the tenant must 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.

I find it is undisputed that the Tenant did not return the visitor passes and fob to the Landlords upon vacating the rental unit. I find the Landlords have provided receipts in support of the amounts that they paid for replacements.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlords \$115.00, or \$40.00 + \$75.00) for replacement visitor passes and fob.

*e. Landlords' Alternative Accommodations*

I find the previous landlord had issued a two month notice to end tenancy to the Tenant, effective August 31, 2022, so that the Landlords could move into the rental unit on September 1, 2022. I find the Tenant disputed this notice to end tenancy, as well as a separate 10 day notice to end tenancy for unpaid rent or utilities issued by the previous landlord, and the hearing was held on December 1, 2022.

I do not find the Tenant to have breached the Act, the regulations, or the tenancy agreement by disputing the notices to end tenancy and remaining in the rental unit until the hearing on December 1, 2022. Although the outcome of the hearing was not in the Tenant's favour, the Tenant was entitled to dispute those notices to end tenancy under the Act, and was permitted to remain in the rental unit pending the outcome of that hearing.

Furthermore, I find the Tenant applied for a review consideration of the decision and order of possession granted following the December 1, 2022 hearing, and the outcome of that application was not rendered until December 6, 2022. As mentioned above, I find there is insufficient evidence to prove that the Tenant continued overholding past December 6, 2022.

I note that even if I were to find the Tenant to have continued overholding and thereby preventing the Landlords from moving into the rental unit, I would not find the Landlords' cost of alternate accommodations to be damages caused by the Tenant's overholding. I find such costs would not be reasonably foreseeable by the Tenant and would therefore have been too remote. Furthermore, I find the damages resulting from overholding would have been already addressed via compensation for overholding under section 57(3) of the Act, as described above.

Based on the foregoing, I dismiss the Landlords' claim for compensation of \$6,000.00 in rent paid to their family member from September to December 2022, without leave to re-apply.

*2. Is the Tenant entitled to return of double the security deposit?*

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

I find the previous landlord did not offer the Tenant two opportunities for a move-in inspection as required under the Act and regulations, which the Tenant then failed to attend. I find there was no move-in condition inspection report. As such, I find the Landlords' right to claim against the security deposit for damage to the rental unit was extinguished first under section 24(2) of the Act. Since the Landlords' right was extinguished first, I do not find it is necessary to consider the events of the move-out.

Extinguishment means that the Landlords may only apply to claim against the security deposit or obtain the Tenant's consent for deducting from the deposit for a claim other than damage to the rental unit. However, the Landlords may still file a monetary claim against the Tenant for damage to the rental unit.

Pursuant to section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or

- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the Landlords received the Tenant's forwarding address in writing on January 5, 2023, after the tenancy already ended.

I find that in addition to their claim for damage to the rental unit, the Landlords have applied to claim against the security for compensation that is other than for damage to the rental unit. I find the Landlords seek to claim compensation for cleaning, overholding, and other monetary loss against the security deposit. Furthermore, I find the Landlords submitted their application on January 19, 2022, within 15 days of receiving the Tenant's forwarding address. Therefore, I find the Landlords to have complied with the requirements of section 38(1) of the Act.

Since I find the Landlords to have complied with section 38(1) of the Act, I find the doubling provision of section 38(6) of the Act does not apply in the circumstances. Therefore, I do not double the security deposit held by the Landlords to determine whether any portion or all of the security deposit should be returned to the Tenant.

In the section above, I have already found above that the Landlords are entitled to compensation from the Tenant exceeding the amount of the security deposit. Therefore, I dismiss the Tenant's application for return of the security deposit without leave to re-apply.

### *3. Are the Landlords entitled to recover their filing fee?*

The Landlords have been partially successful in this application. I award the Landlords reimbursement of their filing fee under section 72(1) of the Act.

### Conclusion

The Landlords' claims for monetary compensation are partially granted in the amount of \$967.72. The Landlords' claim for reimbursement of the \$100.00 filing fee is granted. The remainder of the claims in the Landlords' application is dismissed without leave to re-apply.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the **\$867.50** security deposit in partial satisfaction of the total amount awarded to the Landlords in this decision.



Pursuant to sections 67 and 72 of the Act, I grant the Landlords a Monetary Order in the amount of **\$200.22** for the balance, calculated as follows:

<b>Item</b>	<b>Amount</b>
Plumbing Repair	\$236.25
Cleaning	\$275.63
Replacement Visitor Pass	\$40.00
Replacement Key Fob	\$75.00
Compensation for Overholding from December 1 to 6, 2022 (\$1,761.00 × 6/31 days)	\$340.84
Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$1,067.72</b>
Less Security Deposit	- \$867.50
<b>Total Monetary Order for Landlords</b>	<b>\$200.22</b>

This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

The Tenant's application is dismissed without leave to re-apply.

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: August 27, 2023

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Residential Tenancy Branch