



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT / MNDL, FFL

### Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants seek the following:

- An order for the Landlords to return the security deposit under section 38 of the Act; and
- To recover the cost of the filing fee for their Application from the Landlords under section 72 of the Act.

The Landlords seek the following:

- A Monetary Order for damage to the rental unit caused by the Tenants under Section 67 of the Act; and
- Authorization to recover the filing fee for their Application from the Tenants under section 72 of the Act.

Both Landlords and one of the two Tenants attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Proceeding Package (Materials) on the Landlords on January 11, 2023 via registered mail. The Landlords confirmed receipt of the Materials and raised no issues with service. Given this, I find

that in accordance with sections 89 and 90 of the Act the Tenants' Materials were sufficiently served to the Landlords.

The Landlords testified they served their Materials on the Tenants via registered mail on August 18, 2023. Copies of the Canada Post tracking information and photographs of the envelopes used to send the Materials to the Tenants were entered into evidence by the Landlords. The Tenant testified they had not received the Landlords' Materials as they had moved out of the province in February 2023 and had not updated the Landlords with their new address for service, having made their Application on January 4, 2023.

I find the address used by the Landlords to serve their Materials to the Tenants was the one listed on the Tenants' Application. Given this, I find the Landlords were entitled to rely on the address for service provided by the Tenants in their Application and, considering the testimony and evidence before me, find the Landlords' Materials were duly served in accordance with section 89 of the Act on August 18, 2023 and were deemed served on August 23, 2023, the fifth day after they were mailed in accordance with section 90(a) of the Act.

#### Issues to be Decided

1. Are the Tenants entitled to an order for the return of the security deposit that the Landlords are holding?
2. Are the Landlords entitled to the requested compensation?
3. Are either party entitled to recover the cost of the filing fee from the other party?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on April 8, 2018.
- The Tenants vacated the rental unit and the tenancy ended on November 19, 2022 under a Two Month Notice to End Tenancy for Landlord's Use of Property.
- Rent was \$1,750.00 per month when the tenancy ended.

- A security deposit of \$875.00 was paid by the Tenants at the start of the tenancy and the Landlords still hold \$212.47 of this security deposit.
- There is a written tenancy agreement which was entered into evidence.

### *Return of Security Deposit*

The Tenant testified as follows. They request the return of the remainder of their security deposit and double the amount of the security deposit. They provided their forwarding address in writing to the Landlords via email on November 5, 2022 and the Landlords acknowledged receipt on November 6, 2022. Copies of the correspondence between the parties was entered into evidence.

They did not consent to the Landlords making a deduction from the security deposit without any notice or communication from the Landlord. Written demands for utilities had been made during the tenancy. They also take issue with the 45 days it took for the Landlords to return part of the security deposit to them. The Landlords sent \$662.53 to the Tenants via e-transfer on January 3, 2023.

The Landlords testified as follows. They did pay back the Tenants security deposit, less utilities for the last rental period. The rental agreement provides the Tenants pay 55% of the utility bills. As the utility bills were received after the Tenants vacated on November 19, 2022, they could not make the deductions right away.

The Landlords acknowledged no written request for the utilities were made to the Tenants and that they did not get the Tenants' permission to retain all, or part of the security deposit. The Landlords acknowledged receiving the Tenants' forwarding address in writing via email on November 6, 2022.

### *Landlords' Claim for Damage to the Rental Unit*

When the Landlords occupied the rental unit after the Tenants vacated, there was damage to the decking and to the paint inside the rental unit.

The damage to the vinyl covering on the decking was already known to the Landlords and had been discussed with the Tenants during the tenancy. The Tenants had said a friend had dropped a cigarette and caused the damage.

The vinyl had been there when the Landlords bought the rental unit in 2016 and they do not know how old it was. The Landlords seek \$2,000.00 of the total \$10,500.00 it cost to

replace the whole covering as only one of the five covering strips was damaged by the Tenants.

There were markings on the walls of two of the bedrooms and paint on the doors had been damaged by removing tape. The Landlords seek \$1,300.00 as compensation and referred me to a quote for this amount to repaint the rental unit in the same colour. The rental unit was last painted in 2016.

Photographs of the damage to the deck and walls were entered into evidence. The Landlords confirmed no condition inspection reports were prepared and no photographs of the rental unit pre-tenancy exist.

The Tenant testified the unit was not freshly painted when they moved in and as there was no condition report, they were unable to show the prior markings on the paint. The paint was falling off the doors already and was damaged and bubbled at the start of the tenancy.

The deck was already in terrible condition when they moved in and the covering was curling up. This caused water to leak underneath the covering and caused damage to the garage.

The damaged caused by the cigarette burn was patched up by the Landlords using a piece of covering around one square foot in size. The Tenant argued the Landlords only replaced the decking as they were told to by their realtor when selling the rental unit.

### Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

### **Are the Tenants entitled to an order for the return of the security deposit that the Landlords are holding?**

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days of the tenancy ending and receiving the tenant's forwarding address in writing, whichever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 36 of the Act also states that a tenant may also extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given 2 opportunities to do so, unless the tenant has abandoned the rental unit.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the evidence before me and testimony of both parties, I find that the tenancy ended on November 19, 2022 and the Tenants provides their forwarding address in writing via email on November 5, 2022. I find the Landlords acknowledged receiving the Tenants forwarding address in writing on November 6, 2022.

This means the Landlords would have had to either returned the security deposit to the Tenants or make an application for dispute resolution claiming against the security deposit by December 4, 2022.

I find the Landlords returned part of the security deposit (\$662.53) to the Tenants on January 3, 2023 and find no evidence they had written permission from the Tenants to retain the remainder of the security deposit, or that an application to the Residential Tenancy Branch seeking authority to retain the security deposit was made at all, let alone within 15 days of the tenancy ending.

I find no evidence that indicates to me the Landlords were entitled to retain the security deposit under either section 38(3) or 38(4) of the Act as the Landlords did not have an outstanding Monetary Order against the Tenants, or have written permission from the Tenants to retain the security deposit.

Additionally, I find there is no evidence that the Tenants had extinguished their right to the return of the security deposit per section 38(2) of the Act as I find no condition inspections of the rental unit that took place.

Given the above, I find the Landlords have failed to comply with section 38(1) of the Act and grant the Tenants' Application. I order the Landlords to return double the security deposit to the Tenants and the amount of the security deposit they still retain, per section 38(6) of the Act.

Per section 4 of the *Residential Tenancy Regulation* (Regulation), interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the portion of the original deposit not returned to the Tenants and is not doubled.

The Tenants' monetary award is summarized as follows:

Item	Amount
Return of security deposit held by the Landlords	\$212.47
Interest on security deposit still held	\$2.90
Double security deposit	\$875.00
<b>Total</b>	<b>\$1,090.37</b>

### **Are the Landlords entitled to the requested compensation?**

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act states 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.

The Landlords request \$1,300.00 for repainting the rental unit and \$2,000.00 to repair damage to the deck.

Section 37(2) of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of the tenancy. Section 32(3) of the Act further sets out that a tenant must repair damage to the rental unit caused by them, or a someone permitted on the property by the tenant.

The Landlords did not submit into evidence any photographs of the rental unit pre-tenancy, or any condition inspection reports. The Tenant disputed the testimony of the Landlords, and I found the Tenants testimony to be more detailed and precise regarding the pre-tenancy condition of the rental unit.

Additionally, as the rental unit was last painted in 2016, and in the absence of any evidence to the contrary, I find it more likely that not that the paint finish within the rental unit was beyond its useful life. It should be noted that per Policy Guideline 40 - Useful Life of Building Elements states they typical useful life of interior paint finishes is 4 years.

Given this, I find the Landlords have failed to prove on a balance of probabilities their loss in respect of the painting exists. Therefore, I find the Landlords are not entitled to compensation for the repainting of the rental unit and I dismiss their claim without leave to reapply.

The Tenant did not dispute the Landlords' testimony that the damage to the deck occurred during the tenancy when a friend was smoking outside, however they argued the deck was in poor condition at the start of the tenancy.

Based on the testimony of both parties and the photographic evidence before me, I find on a balance of probabilities that the vinyl covering for the deck was a significant way through its useful life. I also find the \$10,500.00 invoice submitted into evidence by the Landlords is for the replacement of the whole deck, not just the covering.

Given the above, while I find the Landlords' have proven they are entitled to be compensated for the damage to the deck covering as the Tenants are in breach of section 32(3) of the Act, though I find they are not entitled to the full amount of \$2,000.00 requested. I find that nominal damages of \$100.00 to be appropriate in this case given the amount of the covering that was damaged appears to be relatively small and the deck was reasonably old at the time the damage occurred.

In accordance with the offsetting provisions in section 72 of the Act I adjust the Tenants' Monetary Order in consideration of the Landlords' award per the above.

**Are either party entitled to recover the cost of the filing fee from the other party?**

As both parties were at least partially successful in their respective Applications, I find they are both entitled to recover the filing fees for their Applications.

Per the offsetting provisions in section 72(2) of the Act, I therefore make no award in respect of the filing fee as both parties are entitled to recover \$100.00 from the other.

Conclusion

The Tenants' Application is granted.

The Landlords' Application is granted in part.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlords. It is the Tenants' obligation to serve the Monetary Order on the Landlords. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Tenants' award under section 38 of the Act	\$1,090.37
Less: Landlords' award under section 67 of the Act	(\$100.00)
<b>Total</b>	<b>\$990.37</b>

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: September 12, 2023

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Residential Tenancy Branch