



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's two applications for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the filing fees.

The landlords and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties confirmed receiving the other's evidence, and the tenants confirmed receipt of the landlord's applications.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants as noted above and recovery of the filing fee?

Background and Evidence

The landlord filed a written tenancy agreement showing a month-to-month tenancy start date of August 1, 2022, monthly rent of \$1800, due on the last day for the next month, and a security deposit of \$900 being paid by the tenants to the landlord.

The parties agreed the tenancy ended on June 17, 2023.

In their first application, the landlord claimed for \$1800 for unpaid rent for June 2023 and the filing fee. In their 2<sup>nd</sup> application, the landlord requested to keep the \$900 for cleaning and rubbish removal, and the filing fee.

As to the claim for \$1800, the landlord submitted the tenants wanted to leave the tenancy early, gave 10 days notice and vacated without paying rent for June.

In response, the tenants said there was a flood in the basement on May 20, covering the entire floor, which required them to vacate for 8 days. They believed they were mistreated, faced challenges and sent the landlord an email on June 7 with an offer to the landlord. They did not have access to parts of the suite and heavy fans were going to help dry the unit. The smell was unbearable.

In rebuttal, the landlord said that at no point was the rental unit unlivable, as when the tenants reported the issue, they went to the rental unit and basically removed all of the water with a shop vac. They hired a professional company to ensure the rental unit was dry. It was the tenants' choice to run the fans.

As to the landlord's claim to keep the tenants' security deposit, the landlord said they sent the tenants text messages to offer two dates for a final inspection, without a response. The tenants left a desk, a large bag of clothing and supplies, and the refrigerator and oven were not cleaned.

Evidence filed by the landlord included a condition inspection report (Report) and 5 photographs.

In response, the tenants wrote a statement. The statement correlated with their testimony, and as a result, I have reproduced the summarized relevant statements, in part:

This has been the worst living situation we both have ever experienced. The first day we moved into the suite, we felt the move-in inspection was rushed and we felt unsafe after realizing there were no proper emergency exits. It was clear to everyone that the suite was not cleaned properly, including the appliances and carpets, which we had to pay out of pocket to clean ourselves. The washing machine then broke, and it took three entire weeks to be replaced with no compensation offered. Additionally, we've had mice, an infestation of spiders and silverfish and after asking several times for an exterminator to come in and solve the problem, we were denied. In terms of health and safety, we had to experience mold growing on top of the shower that progressively seemed to get worse throughout our stay. On May 20, 2023, the entire basement flooded with 2 inches of water. Since no proper measures were taken after the flood, I was unable to remain in the suite due to the loud fans, the ozone machine, the moldy smell which was triggering my allergies, and the inaccessibility to my kitchen appliances and bathroom. We were both displaced and faced a financial burden due to the expenses of finding other accommodations during that time. We believe that [redacted] and [redacted] have both partaken in several residential tenancy breaches and have failed in their duty as landlords to provide us with minimum housing and health standards, which implies a housing premises that is safe, sanitary and fit for human habitation. We also believe it is unfair to request the full month's rent after everything we have experienced and after being evicted. We sent [redacted] a proposition which we both believed was fair, but [redacted] and [redacted] denied this and proceeded to evict us. They then ignored our messages and attempted to block our exit on our move out day.

**9. Notice to Schedule a Condition Inspection**

A. Section 35 (2) in the BC Residential Tenancy Act states "the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection." [redacted] texted [redacted] on June 17, 2023, asking to schedule a move-out inspection at the end of the month. Another final notice was sent through the mail requesting to schedule the move-out inspection on July 1, 2023, at 8 am. This letter was not received until July 6, 2023, in the afternoon and it clearly states that this letter was not mailed out until June 30, 2023. This is not enough time to inform a tenant of a move-out inspection date, leading us to believe that this second attempt is invalid. Please refer to the photos in section 9(a).

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenants' evidence included a carpet cleaning invoice from early in the tenancy, photographs of the rental unit from the start of the tenancy and after the flood, text messages between the parties, a monetary order worksheet and statements to the landlord.

**Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

#### Unpaid rent, June

As to the landlords' claim for \$1800 for the monthly rent from June 2023, under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

What this means is that the tenants owed the monthly rent for June 2023, under the tenancy agreement, as they did not vacate until June 17, 2023, and while the tenants claim they had reason to withhold the rent due to the flood, I was not presented with evidence that the tenants had authority under the Act to withhold any portion.

I find the landlords have established a monetary claim of \$1800, comprised of the unpaid monthly rent for June 2023.

#### Cleaning, garbage removal

As to the landlords' request to keep the tenants' security deposit in satisfaction of this claim, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

I find it is not sufficient to make a request to keep the tenants' security deposit without proof of a loss. The invoice submitted by the landlords from my reading is an invoice created by the landlord, without a specific breakdown as to specific charges for work done. For instance, cleaning was charged at \$600 and rubbish removal and disposal at the landfill was \$300, to justify keeping the security deposit. Rule 2.5 requires that an applicant must submit a detailed calculation of a monetary claim being made.

I have reviewed the photographic evidence of the landlord, taken at close range, and find it insufficient to support a claim of \$600. There were minor areas of deficiencies but there were no photographs showing the entire rental unit overall was not left in totality reasonably clean. For instance, 1 photograph showed that the refrigerator door needed wiping. The landlord failed to state how many hours were spent and what items were cleaned. I find there was insufficient evidence to support how the landlord arrived at the sum of \$600.

The landlord also failed to provide how many trips were made to the landfill and the associated costs for dumping fees. I find there was insufficient evidence to support how the landlord arrived at the sum of \$300.

Due to the landlords' insufficient evidence to support their monetary claim for the reasons noted above, I dismiss the landlords' claim to keep the tenants' security deposit of \$900.

As the landlords had partial success with their applications, I grant the landlords \$100 for recovery of one filing fee. I do not grant the landlords recovery of the filing fee for their second application, as they could have amended their original application, without incurring an additional filing fee.

For the above reasons, I grant the landlords a monetary award of **\$1900**, comprised of \$1800 for unpaid rent for June 2023 and recovery of the filing fee of \$100.

As of this date, the tenants' security deposit of \$900 has accumulated interest of \$12.

I direct the landlords to retain the security deposit and interest of **\$912** in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 of the Act for the balance due of **\$988**.

The landlords are provided with a Monetary Order (Order) in the above terms and the tenants must be served with this Order if enforcement is necessary. Should the tenants fail to comply with this Order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the tenants' evidence contained a monetary order worksheet and other evidence which indicated a monetary claim for expenses. However, I do not consider a tenants' monetary claim on the landlords' application.

### Conclusion

The landlords' application for monetary compensation is partially granted in the amount of \$1900 as noted above. The landlords are directed to retain the tenants' security deposit and interest of \$912 and they have been awarded a monetary order for the balance of \$988.

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: September 5, 2023

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Residential Tenancy Branch