



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, FFL / MNDCT, MNSD, FFT

### Introduction

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

The Landlord requests the following:

- A Monetary Order for damage to the rental unit under section 67 of the Act;
- To retain the Tenants' security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Tenants under section 72 of the Act.

The Tenants request the following:

- A Monetary Order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act.
- The return of their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord and one of the Tenants, LC, attended the hearing.

### Service of Notice of Dispute Resolution Proceeding Package and Evidence

As both parties were present, service was confirmed at the hearing. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Package (the

Materials) and evidence. Based on their testimony I find that the Tenants were served with the Landlord's Materials as required under sections 88 and 89 of the Act.

The Tenant testified they served the Materials and their evidence on the Landlord by registered mail on October 18, 2023. The Canada Post receipt and tracking number for the package for the Landlord were provided by the Tenants as evidence. The tracking number is provided on the first page of this Decision.

A copy of the postage label for the package sent to the Landlord was also included into evidence. I find the address on the postage label matches the Landlord's address for service on their Application. A search on the Canada Post website using the tracking number indicates the package was not collected and was returned to sender. The Landlord testified they had not received the Tenants' Materials.

When a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. When the registered mail is refused or deliberately not picked up, receipt is still deemed to have occurred on the fifth day after mailing.

In light of the above mentioned evidence and testimony, I find that per section 89 of the Act, the Tenants' Materials were sufficiently served to the Landlord and were deemed received on October 23, 2023, the fifth day after mailing, per the provisions of section 90(a) of the Act.

#### Issues to be Decided

1. Is the Landlord entitled to the requested compensation?
2. Are the Tenants entitled to the requested compensation?
3. Is the Landlord entitled to retain some, or all, of the Tenants' security deposit?
4. Are either party entitled to recover the filing fee for their Applications?

#### 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 September 2, 2022.
- Rent was \$1,650.00 per month due on the first day of the month throughout the tenancy.
- A security deposit of \$825.00 was paid by the Tenants which the Landlord's agent still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants vacated the rental unit on May 15, 2023 under a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

#### *Landlord's Application*

The Landlord seeks \$795.08 for cleaning costs, repairs and other fees summarized as follows.

Item	Amount
Carpet cleaning	\$285.55
Toilet seat replacement	\$55.99
Paint costs	\$68.93
Painting supplies	\$124.61
Cleaning supplies	\$60.00
Strata move out fee	\$100.00
Filing fee for Application	\$100.00
<b>Total</b>	<b>\$795.08</b>

The Landlord testified as follows. There were stains on the carpet by the entrance of the rental unit caused by the Tenants. Additionally, the carpet had not been vacuumed and there was an aroma of cooking within the unit. They tried unsuccessfully to air out the unit, so opted to use a carpet cleaning company. The carpet had been steam cleaned before the Tenants moved in. The Landlord did not know when the carpet was originally fitted. I was referred to an invoice from the carpet cleaning company submitted into evidence.

The hinge on the toilet seat was broken and it was also discoloured, so the Landlord replaced it for sanitary and aesthetic reasons. The Landlord stated the toilet seat was in good repair before the tenancy began, though they are unsure when it was purchased, and they seek just the costs of the materials. A receipt for the replacement toilet seat was entered into evidence.

The rental unit had been painted before the Tenants moved in. When the Tenants vacated, the paint was “not in terrible condition” but there were obvious nicks where chairs had been moved against the wall. There was pre-existing damage around the fireplace which was not included in the costs. Instead of getting a professional painter, the Landlord purchased equipment and paint and did the work themselves. Receipts for the paint and materials were entered into evidence, as well as photographs of the rental unit and copies of the inspection reports.

The bathroom, kitchen and refrigerator needed a full cleaning after the Tenants vacated and the Landlord stated they spent twelve and a half hours cleaning. They seek just the costs of the materials, which included brushes, towels and Lysol. Receipts for the purchase of these items were provided as evidence.

The building Strata charges a move in and move out fee of \$100.00. The Landlord seeks to recover this amount and stated the amount is deducted automatically from them and that the Strata “may or may not have charged it”. They did not charge the Landlord for moving into the rental unit once the Tenants vacated and the Landlord stated the Strata typically only charges when insufficient notice of moving is given by a party, as protective blankets need to be put out prior to any move in or move out. They believe the Tenants did not give adequate notice when they moved out.

The Tenant testified as follows. The move-in process was chaotic, and they only noticed the carpet was not clean afterwards. They removed their shoes when entering the rental unit during the tenancy and argued there was no mention of any cooking aromas in the move-out inspection so this should be disregarded. They did not see the area of carpet by the door at the start of the tenancy, but noticed there was significant wear and tear when they moved in, but focused on other issues within the rental unit, such as the broken fireplace.

The Tenant argued there was no mention of the toilet seat in the move-out inspection report and are unsure when it broke. The hinge was functional and there were no complaints in this regard during the tenancy.

The Tenant argued the rental unit was not painted soon before they moved in and marks in the Landlord’s photographs match those present when the tenancy started. As a result, they disagree they should be responsible for what they believe is pre-existing damage. I was referred to photographs of the rental unit submitted into evidence by the Tenants, which the Tenant testified were taken the day the tenancy started.

The Tenant referred me to photographs of the bathroom at the start of the tenancy entered into evidence. The Tenant argued the bathroom was quite dirty and the kitchen quite greasy when the tenancy started, and it was no dirtier when they moved out.

The Tenant testified they did give proper notice to the property manager and that there were blankets in the elevator when they moved out. The Tenant argued the Landlord did not provide evidence they were charged the \$100.00 move out fee.

### *Tenants' Claim*

The Tenants seek \$940.00 which is summarized as follows.

<b>Item</b>	<b>Amount</b>
Half a month's rent, plus \$15.00 interest	\$840.00
Filing fee for previous application	\$100.00
<b>Total</b>	<b>\$940.00</b>

The Tenant testified as follows. The tenancy was ended under the Notice, which the Tenants disputed, along with a 10 Day Notice to End Tenancy for Unpaid Rent, and at a hearing which took place on March 28, 2023 the parties had agreed by way of settlement to extend the effective date of the Notice until May 31, 2023. The file number for the previous application is included on the front page of this Decision.

After the previous hearing, the Tenants found a new apartment and on April 26, 2023 they gave the Landlord notice they would be leaving the rental unit early on May 15, 2023. The Tenants' notice to end tenancy was given to the Landlord via email on April 26, 2023 and in-person on May 1, 2023 and copies were entered into evidence.

The Tenant argued they are entitled to one month's rent in compensation as the tenancy ended under a Notice to End Tenancy for Landlord's Use. As they withheld rent due May 1, 2023 and only remained in the rental unit for half a month, they are entitled to the other half a month's rent for the full month compensation, plus interest. The Tenants request the filing fee from their previous application also.

The Tenants also seek the return of their security deposit. The Tenant confirmed the Tenants' forwarding address was providing in writing to the Landlord on May 1, 2023 and on the move-out inspection report which was signed by the parties on May 15, 2023.

The Landlord testified as follows. They agree the Tenants are entitled to half a month's rent but put forward that it was possible the Tenants had already received this compensation due to issues stemming from their agent at the start of the tenancy.

The Landlord stated their then agent initiated the tenancy agreement with the Tenants on their behalf against their will. They asked their agent to return the security deposit and first month's rent to the Tenants as a result. The Landlord received correspondence from their agent stating a cheque had been issued to the Tenants, but they have no information if this was ever cashed. Ultimately, the tenancy continued, the Landlord and their agent ended their professional relationship, and the Tenants paid the Landlord rent directly via e-transfer.

The Landlord acknowledged receiving the Tenants' forwarding address in writing both in advance of the end of the tenancy on May 15, 2023 and on the move-out inspection.

In response to the Landlord's testimony, the Tenant stated the Landlord's agent had said they were told to pay rent and the security deposit to them and would do so, minus their fees. The Tenant testified they refused this and would not agree to be in the middle of the dispute, so they never got any payments from the Landlord's agent.

### 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.

### **Is the Landlord 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 Landlord 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 Landlord 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.

Section 32 of the Act states that a tenant must repair any damage they, or a person permitted on the property by the tenant, caused. Additionally, section 37 of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I shall address the Landlord's claims for compensation in turn having considered the testimony of both parties and the evidence before me, including the move-in condition report, the move-out condition report, which were completed on separate documents in counterpart, and the photographic evidence of both parties.

#### *Carpet Cleaning*

I find on a balance of probabilities that there was a small group of stains on the carpet at the entry to the rental unit which developed during the tenancy. I find the photographic evidence from both parties particularly telling on this subject. Whilst I note the Tenants indicate on the move-out report "when we moved in ... carpet stains were there" I note no issues on the move-in report were listed. Additionally, the Tenants' photographs appear to show the carpet is in reasonably good condition with no stains at the start of the tenancy.

Given this, I find the Landlord has established their claim and the Tenants have breached section 37 of the Act by leaving the stain on the carpet at the end of the tenancy. However, I find the amount claimed by the Landlord includes cleaning the carpets in the whole rental unit, not just the entrance. I note the move-out report indicates no issues with the carpet in the remainder of the rental unit, or the alleged cooking odour, so I am only prepared to award compensation in relation to the stains at the entrance. In this case, I determine compensation of \$75.00 is appropriate.

#### *Toilet Seat*

It was undisputed by the parties the hinge on the toilet seat was broken at some point. Having considered the testimony of both parties I find the Landlord's testimony more

plausible, credible, and convincing than that of the Tenant's and find on a balance of probabilities that the seat was broken during the tenancy.

Based on the photographic evidence, I find it more likely than not that the toilet seat was a reasonable way though its useful life and therefore I am not inclined to award the full replacement cost and conclude an appropriate amount to award is \$30.00.

### *Paint and Painting Supplies*

I find the damage to the paintwork within the rental unit claimed by the Landlord is on the whole minor in nature and some of it appears to have been present at the start of the tenancy, based on the Tenants' photographic evidence, with the exception of the scuff marks, which appear to have been caused by furniture rubbing against the wall.

Given this, and as the Landlord is claiming a significant amount for supplies which can in all likelihood be reused and provide benefit for years to come, I shall not award the full amount claimed and find nominal damages of \$20.00 is appropriate.

### *Cleaning Supplies*

Based on the photographic evidence and the move-out inspection, I find the rental unit, particularly the bathroom, was not left in a reasonably clean condition, as the Tenants are required to do per section 37 of the Act.

I also find the cleaning costs claimed by the Landlord are reasonable in this case and award the full amount of \$60.00 requested as compensation.

### *Strata Move Out Fees*

The Landlord did not submit into evidence anything to substantiate the \$100.00 fee claimed was charged to them. I found their testimony to be quite vague, non-committal and ultimately unconvincing in this regard and as such. Therefore, I find the Landlord had failed to establish their entitlement to this claim and dismiss it without leave to reapply.

### *Filing Fee*

The Landlord has duplicated this claim within their Application, claiming it both among their request for compensation under section 67 of the Act and under the provisions of



section 72 of the Act. The issue of whether the Landlord is entitled to recover the filing fee will be dealt with later in this Decision and I make no award under section 67 of the Act as this would result in double compensation.

### *Summary*

The Landlord's Application for a monetary award is granted in part and summarized as follows.

<b>Item</b>	<b>Amount</b>
Carpet cleaning	\$75.00
Toilet seat	\$30.00
Paint and painting supplies	\$20.00
Cleaning supplies	\$60.00
Strata move out fees	\$0.00
Filing fee	To be determine later in this Decision
<b>Total</b>	<b>\$185.00</b>

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

It was undisputed by the parties that the tenancy ended on May 15, 2023 under the Notice, which had been issued under section 49 of the Act for the Landlord's use.

Section 51(1) of the Act states that a tenant who receives a Notice to End Tenancy under section 49 of the Act is entitled to receive compensation of one month's rent on or before the effective date of the Notice to End Tenancy. A tenant can either withhold the last month's rent, or if a tenant provides early notice to end the tenancy, as is the case in this instance, the landlord must reimburse the tenant accordingly.

Based on the testimony of both parties and the evidence before me, I find the Tenants have received compensation of \$825.00 already by withholding the rent due May 1, 2023 to the end of the tenancy on May 15, 2023. I find the Tenants were not compensated by way of reimbursement or payment from another other source, such as the Landlord's agent and so I grant the Tenants' claim and issue the Tenants a monetary award of \$825.00.

Section 4 of the Regulation provides that interest is payable on security deposits only and not any other compensation, so I decline to award the \$15.00 interest requested by the Tenants.

The Tenants seek to recover the filing fee for their previous application for dispute resolution. As previously mentioned in this Decision, I note the parties reached a mutual settlement of the Tenants' previous application, including the issue of the filing fee for that application. Therefore, this issue has already been decided or otherwise settled by the parties and I make no award accordingly.

**Is the Landlord entitled to retain some, or all, of the Tenants' security deposit?**

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 fifteen 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 two 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 the testimony of both parties, I find that the tenancy ended on May 15, 2023, and the Landlord made their Application on May 28, 2023. Therefore, I find that the Landlord made their application within the fifteen day period as stipulated by section 38(1) of the Act, and the Tenants are therefore not entitled to the return of double the amount of the security deposit.

As the Tenants participated in both the move in and move out inspections, they have not extinguished their right to the return of the security deposit.

As I have made a payment order of \$185.00 in favour of the Landlord under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlord to retain \$185.00

from the Tenants' security deposit in full satisfaction of the payment order under section 72(2)(b) of the Act.

I order the Landlord to return the remainder of the Tenants' security deposit in the amount of \$640.00, plus interest, to the Tenants under section 38.1 of the Act. Interest is calculated on the original security deposit amount, before any deductions are made.

Per section 4 of the 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.

**Are either party entitled to recover the filing fee for their Applications?**

As both parties have been at least partially successful in their Applications, I find both are entitled to recover the filing fee for their respective Applications from the other. As these amounts offset each other, I make no order under section 72 of the Act for the payment of the parties' filing fees.

Conclusion

The Landlord's Application is granted in part and the Landlord is awarded compensation of \$185.00 and may retain this from the Tenants' security deposit. The remainder of the Tenants' security deposit must be returned to the Tenants, plus interest.

The Tenants Application is granted in part and the Tenants are awarded compensation of \$825.00.

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

Item	Amount
Return of remainder of security deposit	\$640.00
Interest on full security deposit	\$15.67
Compensation under section 67 of the Act	\$825.00
<b>Total</b>	<b>\$1,480.67</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: December 20, 2023

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Residential Tenancy Branch