



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on December 1, 2023 concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlords were represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant also attended, gave affirmed testimony and provided evidence. At the commencement of the hearing, the parties agreed that all evidence should be considered. Therefore, I have reviewed all of the evidence, and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for liquidated damages and loss of rental income?

- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on October 1, 2022 and was to revert to a month-to-month tenancy after September 30, 2023. However, the tenant gave notice to end the tenancy by email on May 3, 2023 effective on June 1, 2023, and moved out of the rental unit on June 15, 2023.

Rent in the amount of \$3,150.00 was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,575.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family home, and a copy of the tenancy agreement has been provided by the landlords for this hearing.

The landlord's agent further testified that although the tenant's notice to end the tenancy was effective June 1, 2023, and the tenancy was for a fixed term until September 30, 2023, the tenant remained in the rental unit until June 15, 2023 without paying any rent for that month. The landlords were able to re-rent for July 17, having to reduce rent to \$2,800.00 in order to re-rent. The landlord claims \$3,150.00 for June, 2023 rent and half a month of rent, or \$1,575.00.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and copies have been provided for this hearing. The move-out portion is not dated, and the landlord's agent testified it was completed on June 15, 2023 and the tenant provided a forwarding address in writing on that report. Numerous photographs at move-in and move-out have also been provided, and the landlord's agent testified that the move-in photographs were taken on September 22, 2022 and the move-out photographs were taken on June 15, 2023.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$11,449.67:

- \$945.00 to fill and patch all holes in walls, repair damages, paint walls;
- \$320.00 for a cleaning bill;
- \$714.63 to order and install a new stove top;
- \$3,150.00 unpaid rent for June, 2023;
- \$3,150.00 lost rent for July, 2023;
- \$395.93 for unpaid City utility bill Oct 1/22 to Dec 31/22;

- \$411.61 for unpaid City utility bill Jan 1/23 to Mar 31/23;
- \$2,362.50 for a placement fee of 75% of the rental amount.

The tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. The rental unit was last painted in the summer of 2022, which was renovated before the tenant moved in. An Invoice for the painting has been provided for this hearing, and the landlords hired the same painter who painted in 2022. He painted 1 wall in the living room where the tenant had installed a television mount, so there were multiple open and large holes that could not be patched. The painter also painted the front entrance where 2 anchors were placed by the tenant, leaving holes larger than a toonie. The anchors had to be removed and holes patched. The wall in the master bedroom was very black, and a television stand and shelving below had been mounted as well as another shelving unit anchored to the wall. It was pretty damaged. That room had to be repainted. Also, marks that appeared to be from candles were left on the ceiling, but were not repainted by the landlords due to the cost. Closet doors were removed and the painter had to put them back on.

The tenant did not clean the oven, and food was left in the fridge and freezer. Cabinets had not been cleaned out or drawers in the kitchen; windows had not been cleaned, nor the inside or outside of the dishwasher. The landlords have provided an invoice from the cleaner.

The tenant damaged the stove top, and photographs show cracks and scratches. An estimate has been provided for this hearing. The landlord's agent testified that the stove was new at the beginning of the tenancy. The landlords withdraw that portion of the claim, indicating that the landlords didn't pay for a new one; the tenants now in the rental unit are fine with the stove the way it is.

With respect to lost rent, the landlord's agent testified that the landlords reduce the claim to \$1,625.81 which is pro-rated to July 16, 2023.

The tenant failed to pay the utility bills and copies have been provided for this hearing.

The tenancy agreement provides for liquidated damages in the amount of 75% of the monthly rent, which the landlords claim as against the tenant.

The renovations completed prior to the beginning of the tenancy were done by the landlords.

The tenant has not made an Application for Dispute Resolution as against the landlords claiming the security deposit.

**The tenant** testified that she wanted to stay in the rental home, and didn't have time to consider moving out, but earlier in the year the tenant started to get sick. The tenant went to clinics and to a physician with asthma, nasal drips and could hardly breathe. The shower had black mold, and photographs have been provided showing mold under the shower platform. The tenant cleaned it, then saw something on the internet talking about black mold and discussed it with the physician, who confirmed the illness was from the mold. A copy of the physician's note has been provided for this hearing.

In April, 2023 the tenant emailed the landlord, and the parties had a discussion on the phone. The tenant told the landlord about the tenant's symptoms and the landlord recommended that the tenant leave for a week to see if the symptoms were caused by the mold. The tenant stayed in a hotel for a weekend, during which the tenant felt better.

The landlord was pretty dismissive about the mold issue, and nothing transpired, so the tenant had to take action in moving out.

The landlord took the key during the move-out condition inspection, so the tenant couldn't finish taking things out of the fridge or clean it. The tenant trusted the cleaner.

It came down to the tenant's health and that of the tenant's 12 year old son. The tenant's son didn't use the same shower as the tenant, so didn't succumb to any illness.

The tenant does not dispute the utility bills.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenant gave notice to end the tenancy on May 3, 2023 effective on June 1, 2023 and didn't pay any rent for June or July on a fixed-term tenancy. Damage existed on the walls and cleaning wasn't complete. The landlord had to lower the price of the home to re-rent in order to get the tenant off the hook. The landlord does not claim the difference, but only what the landlord is owed. The landlord was not given notice of mold exposure until April 24. The tenant said she was going away for the weekend. The landlord did not tell the tenant to leave for a week but asked the tenant to let the landlord know the result of chest x-rays and results from the tenant's physician to pinpoint the problem. Ten days later, the tenant gave notice to end the tenancy. The landlord checked the furnace filter, which was blown out into the HVAC system, which

was the tenant's responsibility. The landlord had to hire someone to get it out of the top of the HVAC system. The landlord disputes being dismissive.

#### SUBMISSIONS OF THE TENANT:

Ultimately it comes down to the tenant's stress and sense of urgency, and the landlord's agent was dismissive, without addressing the actual issue. It is not a coincidence that the tenant is better now. The tenant's business is a health business, and has air purifiers dealing with HVAC, so the tenant does not know if that was the problem, but the filter was changed during the Christmas holidays.

#### Analysis

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate such damage or loss suffered.

The law also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. I have reviewed all of the evidence provided by the parties.

A tenant is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy. I have reviewed the Invoice of the painter, and I accept the undisputed testimony of the landlord's agent that the same painter had painted prior to the beginning of this tenancy. The Invoice is dated June 26, 2023 and states that the invoice amount of **\$945.00** was for repairing, patching and painting all damaged walls. It also states that "Damage beyond reasonable wear throughout the house," and "House had just been painted in 2022." The condition inspection report shows that the walls in the living room, dining room and master bedroom were damaged at the end of the tenancy. I find that the landlord has established that claim.

The requirement of a tenant to leave a rental unit reasonably clean and undamaged is to be done prior to the move-out condition inspection, so the claim of the tenant that the landlord took the keys is not unusual, nor a defence. Considering the inspection reports and the photographs, I am not satisfied that the tenant left the rental unit reasonably

clean. The landlord's agent testified that the amount claimed was an estimate, and has provided an invoice for cleaning dated June 28, 2023 in the amount of **\$401.63** and I am satisfied that the landlord has established that claim.

In a fixed-term tenancy, neither the landlord nor the tenant may end the tenancy prior to the end date of the fixed term, unless the tenant fails to pay rent or the landlord has cause to evict. The tenant gave notice to end the tenancy effective prior to the end date of the fixed term, and testified that it was urgent due to mold. I have reviewed the note of the tenant's physician, which is dated May 8, 2023, after the tenant had given notice to vacate. It states that the writer was requested to write a note in regards to "possible mould/ environmental allergen exposure in current dwelling and therefore would support her terminating her lease to look for a better living environment." Nothing in the physician's note indicates that any testing was done, just that there is possible mould allergen exposure. In order to justify ending the tenancy earlier than the end date of the fixed term, the tenant would be required to provide evidence of mold exposure, and I am not satisfied that the tenant has done so. A possible mould allergen exposure is not sufficient without testing. Also, I accept the undisputed testimony of the landlord's agent that the landlord was not given any notice of mold exposure until April 24, 2023, and 10 days later gave the notice to end the tenancy.

Even in a month-to-month tenancy, a tenant is required to give notice to end the tenancy before the date rent is payable and cannot be effective earlier than the end of the period. In this case, it is not a month-to-month tenancy. Further, the tenant gave notice to end the tenancy on May 3, 2023, which could not have taken effect before the end of July, 2023 if it was a month-to-month tenancy. In the circumstances, I find that the landlord has made a claim for **\$3,150.00** for June's rent. Since the tenant did not vacate the rental unit until June 15, 2023, and the landlord was able to re-rent for July 17, 2023, I am satisfied that the landlord is entitled to rent on a per diem basis from July 1 to July 16, 2023 in the amount of **\$1,625.76** ( $\$3,150.00/31 = \$101.61 \times 16 = \$1,625.76$ ).

The tenant does not dispute the unpaid utility bills and I find that the landlord is entitled to recover **\$395.93** and **\$411.61**.

I have also reviewed the tenancy agreement, which specifies liquidated damages in the amount of 75% of 1 month's rent if the tenant causes the tenancy to end earlier than the end date of the fixed term. I find that the landlord has established a claim of **\$2,362.50**.

Since the landlord has been successful with the application, the landlord is also entitled to recover the **\$100.00** filing fee from the tenant.

The landlords have also applied for an order permitting the landlord to keep the \$1,575.00 security deposit, and I so order. Having found that the landlords have established claims totaling \$9,392.43, I order the landlord to keep the security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference of **\$7,817.43**.

I grant a monetary order in favour of the landlord as against the tenant in the amount of **\$7,817.43**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,575.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$7,817.43**.

This order is final and binding and may be enforced.

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: December 07, 2023

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Residential Tenancy Branch