



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSDS-DR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the return of all or part of the security deposit or pet damage deposit; and to recover the filing fee from the landlords for the cost of the application.

The hearing was originally scheduled to be heard on December 19, 2023, and I adjourned the hearing to January 24, 2024. My Interim Decision was provided to the parties after the December 19, 2023 hearing date.

Two of the named tenants and both named landlords attended the hearing on both scheduled dates, and all parties gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

My Interim Decision specified that any evidence that the tenants intended to rely on must be provided to the landlords 14 days prior to the January 24, 2024 hearing date, and any evidence that the landlords wished to rely on must be provided for this hearing and to the tenants 7 days prior. The tenants had provided evidentiary material prior to the first scheduled date, and uploaded more evidence on January 8, 2024. I accept that and all evidence of the tenants is considered in this Decision.

One of the landlords (JC) provided evidence on January 18, 2024 and was served to the tenants the same day. The tenants agree that all of the evidence of that landlord should be considered. However, the other landlord (AC) did not provide any evidence to the tenants, and I decline to consider it.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for garage door repair, loss of work, loss of a vehicle and the value of upgraded parts to the vehicle?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

**The first tenant** (PM) testified that this fixed-term tenancy began on May 1, 2022 and was to revert to a month-to-month tenancy after April 30, 2023, which ultimately ended on May 30, 2023. Rent in the amount of \$2,500.00 was payable on the last day of each month and there are no rental arrears. At the outset of the tenancy, on May 1, 2022 the landlords collected a security deposit from the tenants in the amount of \$2,500.00 and returned \$1,250.00 to the tenants on May 30, 2023. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy. The tenants received a copy of the move-out portion, but not the move-in condition inspection report. A copy has been provided for this hearing, which is not a report at all, but a statement dated May 31, 2023 stating that the landlords had received the keys and remote from the tenants, and that if there is no damage the damage deposit of \$2500 will be returned to the tenants.

The tenants were told by a text message that the tenants had to move out by the end of the fixed term, April 30, 2023. At the beginning of March, 2023 the tenant and the property manager discussed extending it to June 30, 2023 since the tenants' daughter was still in school. An agreement was made for the tenants to stay if the landlord agreed, and if not, the property manager said not to worry because he had another property in the neighbourhood. The tenants had planned to give 2 months rent in advance, which they did on March 10, 2023.

On March 21, 2023 the tenants received a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy of the first of 4 pages has been provided by the tenants for this hearing. It is dated May 8, 2023 and contains an effective date of vacancy of May 15, 2023, which were incorrect dates. However, the landlord sold the rental property.

On April 19, 2023 the parties signed a Mutual Agreement to End Tenancy effective May 31, 2023 because the tenants were told that the landlord had nowhere else to live following a divorce with 2 young children. However, the house was sold and the landlord never moved in. The tenants vacated the rental unit on May 30, 2023 at which time the landlord returned \$1,250.00 of the security deposit. During the move-out inspection the landlord told the tenant that the reason for ending the tenancy was due to lack of rent payments on time, and came to the conclusion that there was a gap between the dates rent was paid to the property manager and the date that it was sent to the landlord. The remaining \$1,250.00 of the security deposit has not been returned to the tenants and the tenants have not been served with a Notice of Dispute Resolution Proceeding or application by the landlords claiming against the security deposit.

The tenants have provided a Monetary Order worksheet setting out the following claims, totaling \$24,289.34:

- \$1,250.00 for the security deposit;
- \$1,250.00 for the late return of a portion of the security deposit;
- \$47.34 interest on the deposit;
- \$100.00 for the filing fee for this application;
- \$750.00 for garage door repair;
- \$3,154.72 for lost days of work;
- \$6,000.00 for the value of a vehicle;
- \$11,737.28 for upgraded parts on a car.

The landlords were provided with the tenants' forwarding address in writing on June 1, 2023 by registered mail, and has provided a copy as well as a Proof of Service document signed on June 20, 2023.

During the tenancy the tenants had valuables stored in the garage, and the door was hanging, not connected to the locking system. The tenant told the landlord about it on December 22, 2022, during the coldest time of winter. The property manager said he would talk to the landlord and send someone to repair it, but no one showed up. The tenant had it repaired at a cost of \$750.00, and a receipt has been provided for this hearing.

The tenant lost 16 days of work in May, 2023. The tenants had to find rental property because the that the property manager had promised was not provided to the tenants. The tenants have also provided for this hearing an Hours of Service Report running from May 1, 2023 to May 31, 2023 and a payroll stub for the pay-day of 2023-05-31.

The tenants lacked the funds to move the vehicle, which was towed for parking in front of the townhouse. With such short notice the tenants could not find a place with 2 parking spaces, at a time when the tenants had to find funds for a security deposit and rent for a new place. The tenants were in the process of purchasing a new home and had to choose where every dollar goes, and did not have the money to remove the car from the tow yard. The tenants couldn't let it stay there but the tow yard said it would go to collections which would affect the ability to purchase a home, and had to sign the car over to the tow company to pay their fees. If the landlords had returned the security deposit, the tenants could have saved the car and paid the parking charge. The vehicle is a 2000 Mercedes Benz. The tenants claim \$6,000.00 as an estimate of a car of the same year, make and model. The tenants have provided a copy of a CARFAX Canada Value Range document showing that the estimated private range of cost is \$5,134.00 to \$6,851.00, and estimated retail range is \$6,068.00 to \$7,915.00.

The tenants also claim \$11,737.28 for upgraded parts that the tenant put on the car before it was towed.

**The second tenant** (LC) testified that this tenancy cost the tenants financially, and was traumatic and stressful. This was the tenants' daughter's first year in Canada. She was adjusting and doing well in school, but questioned if the family would be homeless.

**The landlord** (AC) testified that the landlord had trouble getting rent since January. The only information the landlord received was from the property manager, who told the landlord that the tenants had a daughter. The landlord is a single mom with 2 kids, so didn't serve a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, and allowed the tenants to finish the fixed term.

In March, 2023 the landlord told the property manager that the landlord wanted to end the tenancy, but the property manager said that the tenants wanted to stay. The landlord told the property manager to give the Mutual Agreement to End Tenancy to the tenants.

On May 30, 2023 the landlord met with the tenants, who said that rent had been paid on time.

The landlord and the property manager each received half a month's rent as a security deposit. The landlord's half was returned to the tenants.

With respect to the garage door, the landlord testified that the tenants didn't mention the cost. The receipt only shows the door, but no details of what was repaired. The property manager told the landlord that the tenants fixed it and not to worry about it.

The landlord did not sign the Two Month Notice to End Tenancy For Landlord's Use of Property; the landlord's situation is not stable and needed to sell.

**The second landlord** (JC) is the property manager, who testified that he didn't return the security deposit to the tenants, but placed it "on hold" because the property manager was blackmailed by a client in March. The property manager agrees to repay double the amount, plus interest to the day of the hearing to the tenants.

The property manager tried to find short term rentals but the tenant said he didn't have enough money and bought a house, and now claims multiple issues.

On March 21, 2023 the property manager sent out the Mutual Agreement to End Tenancy and the tenant said he would pay 2 months rent to stay longer. Then he said the tenants could move out on May 30, 2023 because they bought a place. The landlords gave 2 full months for the tenants to find a place and offered \$250.00 for assistance in moving. The parties had a good relationship.

If the garage door needed to be repaired, the landlord has to do that. The property manager tried to arrange that, but the tenant said he wouldn't be home until late, then said he fixed it, but never mentioned the amount.

The property manager's mental health got worse when the tenant asked for \$18,000.00, then claimed \$24,000.00. The tenant refused to prove the car was his.

### Analysis

Firstly, a landlord is not permitted by law to collect more than half a month's rent from a tenant for a security deposit. In this case, the landlords collected a full month of rent, which is not disputed by the landlord or the property manager.

A landlord is required to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, since rent was payable on the 1<sup>st</sup> day of each month, I find that the tenancy ended on May 31, 2023 and the tenants have provided proof of serving the landlord with a forwarding address in writing on June 1, 2023 by registered mail, which is deemed to have been served 5 days later, or June 6, 2023. The landlord has only returned half of the security deposit collected, and I find that the tenants have established a claim for double, or \$2,500.00. I also find that the tenants are entitled to interest on the amount of \$10.03 for the 13 months of the tenancy on half of the deposit, and \$26.71 for the unpaid amount to the day of this hearing, for a total of **\$2,536.74**.

Where a party makes a claim for monetary compensation, the onus in 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 *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

With respect to the garage door, I accept the undisputed testimony of the tenant that the tenants had valuables in the garage and contacted the property manager about getting it repaired, but no one showed up. A tenant may claim the cost of emergency repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixture, the primary heating system, damaged or defective locks that give access to a rental unit, electrical systems, or in prescribed circumstances a rental unit or residential property. The law also states:

33 (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I am not satisfied that the tenants have established that the tenants gave the landlord a reasonable time to make the repairs, or that the repairs qualify as emergency repairs. Therefore, I dismiss the tenants' claim for repairing the garage door.

With respect to missed work, I accept the undisputed testimony of the tenant that the tenants had advised the property manager that the tenants wanted to stay in the neighbourhood until the end of June, 2023, but the landlords required the tenants to move out earlier, and the tenants ultimately signed a Mutual Agreement to End Tenancy. This has been a tumultuous tenancy, and required the tenants to find alternate housing in a short period of time. I have reviewed the tenant's pay stub and Hours of Service Report. The Mutual Agreement to End Tenancy was signed by the parties on April 19, 2023, and any time that a tenant moves to a new location, it takes time. Because the tenants signed the Mutual Agreement to End Tenancy on April 19, 2023, albeit under false claims by the landlord's property manager, I find that the tenants have failed to establish that the landlords failed to comply with the Act or the tenancy agreement, and I dismiss the claim for loss of wages.

With respect to the \$6,000.00 value of the vehicle, the tenant testified that If the landlords had returned the security deposit, the tenants could have saved the car and paid the parking charge, and I accept that. I have also reviewed the CARFAX Canada Value Range document provided by the tenants, and I find that the lower amount of **\$5,134.00** has been established.

I am not satisfied that the landlords are responsible for the \$11,737.28 claim for upgraded parts on the car.

Having found that the tenants have established a claim totaling **\$7,670.74**, the tenants are also entitled to recover the **\$100.00** filing fee from the landlords.

I grant a monetary order in favour of the tenant as against the landlords in the amount of **\$7,770.74**. The landlords must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

The property manager testified that he is willing to return double the security deposit to the tenants, however, the law defines a landlord as an agent for a landlord, or a landlord who permits occupation by a tenant. The tenants have filed against the landlord and the property manager, and it is up to them to apportion what amount is owed by whom to the tenants.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$7,770.74**.

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: January 31, 2024

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Residential Tenancy Branch