



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT / MNRL-S, MNDL-S, MNDCL-S, FF

### 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:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act; and
- Authorization to recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord seeks the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act;
- Authorization to retain all, or a portion, of the security deposit under section 38 of the Act; and
- Authorization to recover the filing fee for their Application from the Tenants under section 72 of the Act.

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

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the

other's Application and the other party's evidence. Based on their testimonies and mutual confirmation of receipt, and as no objections were raised, per section 71 of the Act, I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

### Issues to be Decided

1. Are the Tenants entitled to the return of their security deposit?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to a Monetary Order for damage to the rental unit?
4. Is the Landlord entitled to a Monetary Order for loss under the Act, Regulation, or tenancy agreement?
5. Is the Landlord entitled to retain some, or all, of the Tenants' security deposit?
6. Are either party entitled to recover the cost of the filing fee for their Application 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 July 1, 2022 for a fixed term ending June 30, 2023 and continuing on a month-to-month basis thereafter.
- Rent was \$3,000.00 per month, due on the first day of the month throughout the tenancy.
- A security deposit of \$1,500.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants vacated the rental unit, an apartment, on June 30, 2023.

### *Return of Security Deposit*

The Tenants testified as follows. They seek the return of their security deposit. The Landlord advised them on May 15, 2023 via text message that they would be selling the rental unit and on May 23, 2023 the Landlord brought prospective buyers to view the rental unit. The Tenants and Landlord spoke during this visit and mutually agreed that

the tenancy would not be extended beyond the fixed term which was set to end on June 30, 2023.

The Tenants stated they started moving out on June 26, 2023 and arranged for a move-out inspection with the Landlord which took place on July 1, 2023. A copy of the move-out inspection report was entered into evidence. The Tenants provided their forwarding address to the Landlord on July 1, 2023 on the move-out inspection report, and via text message, also on July 1, 2023. There was no move-in inspection of the rental unit at the start of the tenancy.

The Landlord was not satisfied with the job the Tenants' cleaners had done, so the parties agreed the Landlord could retain \$120.00 of the security deposit to cover additional cleaning costs.

The Tenants later found out the Landlord had rented out the rental unit to new Tenants after they vacated instead of selling it. The Tenants did not waive their right to the return of double the security deposit.

The Landlord testified as follows. They kept the security deposit because the Tenants only let them know they needed to move out on June 26, 2023. The inspection on July 1, 2023 was hurried as the Tenants were late, so the Landlord asked the Tenants to do another inspection on July 8, 2023, which they did not attend. During the inspection on July 8, 2023, the Landlord found cat hair in the rental unit and that it was unclean.

The Landlord acknowledged they attended the rental unit on May 23, 2023 to show prospective purchasers, but stated they did not discuss the end of tenancy with the Tenants. The Landlord confirmed they received the Tenants' forwarding address on July 1, 2023 by text message.

The Landlord initially stated they let the Tenants know via text message the tenancy agreement would continue to run on a month-to-month basis after June 30, 2023, but after discussing the copies of text message correspondence, which was carried out in Chinese, that was submitted into evidence by both parties, the Landlord acknowledged they did not do this.

In response to the Landlord's testimony, the Tenants referred me to copies of the text message communication entered into evidence. The Tenants argued the Landlord is seen to confirm the agreement runs until the end of June 2023. The Tenants also argued the Landlord's statement they first knew the Tenants were moving out on June

26, 2023 was not correct given the Landlord posted the rental unit for sale on June 25, 2023 and listed the unit as vacant. A copy of the listing was entered into evidence by the Tenants.

### *Landlord's Claim*

The Landlord's claim is summarized as follows:

Item	Amount
Unpaid rent	\$2,700.00
T-Mould	\$80.00
Bed	\$200.48
Sofa covers	\$716.80
Balcony tiles	\$253.94
Strata fines	\$400.00
<b>Total</b>	<b>\$4,351.22</b>

The Landlord testified as follows. They request \$1,200.00 in unpaid rent from the Tenants as they gave the keys to the rental unit on June 18, 2022 so seek rent from this date to June 30, 2023. They did not request this rent from the Tenants at the time, during the tenancy, or before making their Application because they forgot to do so.

They also seek \$1,500.00 in unpaid rent from July 1 to July 15, 2023 because the Tenants provided late notice they were vacating the rental unit, and they could only find a new tenant to move in from July 15, 2023. The Landlord disputed the notion the parties reached a mutual agreement the tenancy would end on June 30, 2023.

The Landlord argued the Tenants damaged a t-mould in one of the door trims within the rental unit and they seek \$80.00 for this. A photograph of the trim with what appeared to be a chip taken out was entered into evidence by the Landlord. The \$80.00 requested by the Landlord is an estimate, no receipts or invoices were provided, and the T-mould has not been repaired.

The Landlord bought a brand new bed at the start of the tenancy and found cat hairs on the headboard when the Tenants vacated the rental unit. A receipt for a new Ikea bed for \$200.48 was entered into evidence by the Landlord as well as photographs of the bed.

The Landlord stated the sofa covers were not new at the start of the tenancy and had been used for a couple of years beforehand, but the Tenants damaged them during the tenancy. Undated photographs of the sofa labelled “before” and “after” were entered into evidence as well as screen shots of pages from the Ikea website.

The Landlord stated the Tenants had left cigarette burns on the tiles on the balcony. The balcony is about 110 square feet, and the Landlord estimates 50 square feet will need to be replaced, though this has not been done yet. The amount claimed is an estimate. No receipts, quotes or invoices were entered into evidence.

The Landlord also seeks to recover \$400.00 in unpaid strata fees incurred by the Tenants. Copies of three letters were entered into evidence by the Landlord. The Landlord stated the letters were provided to the Tenants when they were received and one of the fines had been paid, though \$400.00 remained outstanding.

The Tenants testified as follows. They argued they were not late for the move-out inspection on July 1, 2023 and met the Landlord in the lobby of the residential property and the inspection lasted two hours. No issues were raised by the Landlord, and they signed the report, and returned the keys.

The Tenants disputed the notion they caused any damage to the rental unit and stated they are not smokers and do not have a pet. They stated the online posting relating to a cat entered into evidence by the Landlord was from 2020 and was connected to one of the Tenants’ ex-girlfriend’s cat, not theirs.

The Tenants reiterated there was no move-in inspection to record the condition of the rental unit at the start of the tenancy and they were unsure when the photographs of the rental unit labelled “before” the tenancy were taken.

The Tenants stated they were allowed to move in early by the Landlord and did so a couple of days before the tenancy was to start on July 1, 2022 and the Landlord had never requested rent for this period until their Application was made.

The Tenants agreed they paid \$200.00 of the \$600.00 total strata fines and stated they had contacted the strata counsel to try and have the fines waived, but they had not received confirmation this had been done yet.

## 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 the return of their 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.

It was undisputed by the parties that the Tenants vacated the rental unit on June 30, 2023, the Tenants did not provide written notice to end the tenancy, there was no move-in condition inspection, and a move-out condition inspection took place on July 1, 2023.

The parties disputed the day the tenancy ended. The Tenants argued the tenancy ended on June 30, 2023, the end of the fixed term, as the parties discussed this in person and came to a mutual agreement on May 23, 2023. The Landlord argued there was no mutual agreement to end the tenancy and the first time they learned the Tenants would be vacating the rental unit was on June 26, 2023.

Based on the evidence before me and the testimony of both parties, whilst the Tenants did not provide written notice to the Landlord to end the tenancy on June 30, 2023, in accordance with section 45 of the Act, I find on a balance of probabilities that the parties entered into a verbal agreement the tenancy would end when the fixed term concluded on June 30, 2023 and the tenancy would not continue on a month-to-month basis after that.

In reaching this conclusion I note the listing placing the rental unit for sale states it is vacant on June 25, 2023, a day before the Landlord purportedly learned the Tenants were vacating for the first time. Additionally, I found the Tenants' testimony on the subject of a mutual agreement the tenancy would be ending June 30, 2023 to be clear, detailed and overall to be more convincing and credible than the Landlord's, which I found to be vague and inconsistent. As a result, I give significant evidentiary weight to the Tenants' testimony.

I also note the Landlord is seen to acknowledge to the Tenants via text message that the tenancy will end on June 30, 2023 and though the Landlord initially testified they told the Tenants the tenancy would continue on a month-to-month basis after that, they clarified this did not happen which I find further supports the notion the parties agreed the tenancy was to conclude when the fixed term ended.

I find the Tenants' forwarding address was provided on the move-out inspection report which was prepared on July 1, 2023. Additionally, the Landlord testified they received the Tenants' forwarding address on July 1, 2023 via text message also.

Given this, I find the Tenants' forwarding address was served in accordance with section 88(a) of the Act via the condition inspection report, and was received by the Landlord on the same day it was given, July 1, 2023, per section 90 of the Act.

Additionally, though text message is not an approved method of serving documents, given that based on the evidence before me, I find the parties conducted frequent correspondence by text message and as the Landlord acknowledged receipt of the Tenants' message containing their forwarding address, under section 71 of the Act I order the Tenants' forwarding address was also sufficiently served in accordance with the Act via text message to the Landlord, and was received on July 1, 2023.

Per the Tenants' testimony, I find they authorized the Landlord to retain \$120.00 from the deposit to cover cleaning fees.

The above means the Landlord would have had to either return the security deposit, less \$120.00, to the Tenants or make an application for dispute resolution claiming against the security deposit by July 15, 2023. It was undisputed the Landlord retains the full security deposit and I find the Landlord made their Application claiming against the security deposit on July 27, 2023.

Given the above, I find the Landlord has failed to comply with section 38(1) of the Act and grant the Tenants' Application for the return of their security deposit. Therefore, I order the Landlord to return the security deposit plus interest, less \$120.00, and double the security deposit to the Tenants under section 38(6) of the Act.

Nothing before me indicated the Tenants extinguished their right to the return of the security deposit by failing to participate in an inspection of the rental unit, per sections 24 and 36 of the Act. Though the Landlord submitted into evidence a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) for an inspection on July 8, 2023, as the move-out inspection had already taken place on July 1, 2023, I find the Tenants are not in breach of section 36 of the Act by failing to attend the second inspection.

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 as \$32.07 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

### **Is the Landlord entitled to a Monetary Order for unpaid rent?**

Section 26 of the Act requires tenants to pay rent when it is due under the tenancy agreement. Section 67 of the Act states that an arbitrator may determine the amount of, and order that party to pay, compensation to the other party if damage or loss results from a party not complying with the Act, including the non-payment of rent.

Per the copy of the tenancy agreement entered into evidence, I find the Tenants were obligated to pay the Landlord rent of \$3,000.00 per month from July 1, 2022.

The Landlord seeks \$1,200.00 in unpaid rent from the period June 18 to June 30, 2022, though it was not made clear to me how the Landlord came to the conclusion the Tenants occupied the rental unit from this date. The Tenants testified they moved in "a couple of days" early and were allowed to do so by the Landlord after receiving the keys to the rental unit before July 1, 2022.



It was also not made clear to me why the Landlord waited until the tenancy had ended before making a claim for this amount and had not asked the Tenants for this rent before making their Application despite having ample opportunity to do so. I did not find the Landlord's testimony that they "forgot" to ask the Tenants for the amount of rent in question to be plausible, consistent with logic, or to be credible. I note the tenancy agreement was signed June 12, 2022 and had the parties intended on rent to be due before July 1, 2022 there was ample opportunity note this on the tenancy agreement.

Given the above, I find on a balance of probabilities there was no intention for rent to be due before July 1, 2022 under the tenancy agreement and the Landlord's claim for rent for June 18 to June 30, 2022 is dismissed without leave to reapply.

The Landlord also seeks rent of \$1,500.00 for the period July 1 to July 15, 2023. As previously stated in this Decision, I find the tenancy ended June 30, 2023. Tenants are not obligated to pay rent to a landlord once the tenancy has ended, though landlords may recoup costs of overholding should a tenant occupy the rental unit beyond the end of the tenancy. Nothing before me indicated this was the case here, therefore I dismiss the Landlord's claim for unpaid rent for July 1 to July 15, 2023, without leave to reapply.

### **Is the Landlord entitled to a Monetary Order for damage to the rental unit?**

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.

It was undisputed that there was no move-in condition inspection report prepared. Though the Landlord submitted into evidence photographs of the rental unit from before the start of the tenancy, the photographs are not dated, nor did the Landlord provide any evidence to confirm when they were taken.

Additionally, I find it is not possible to reliably discern any change in condition of the sofa covers, t-mould or balcony as the post-tenancy photographs are taken from vastly different perspectives than the pre-tenancy images. Additionally, the Landlord produced no evidence to support the amounts claimed in respect of the t-mould or balcony tiles and said the figures were estimates and the purported damage had not been repaired.

In respect of the purported damage to the bed, I find the photographs were taken from a very close perspective and show a small amount of dust and hair on what appears to be a fabric bedhead. There appeared to be no damage or wear and tear to the bed at all. No explanation was offered as to why this negligible amount of hair and dust could not be cleaned or why the Landlord was seeking the full cost of a relatively new bed because of the dirt.

Given the above, I find the Landlord has failed to establish their claims for damage to the rental unit in respect of the t-moulding, bed, sofa covers, and balcony tiles and I dismiss the Landlord's Application for these costs without leave to reapply.

**Is the Landlord entitled to a Monetary Order for loss under the Act, Regulation, or tenancy agreement?**

Based on the Landlord's evidence, I find that three strata fines of \$200.00 each were issued to the Landlord based on incidents relating to the rental unit during the tenancy. It was undisputed the Tenants had paid for one of the fines. Though the Tenants stated they were communicating with the strata council about the other two, I find that per the correspondence from strata council, the decisions regarding these fines have been made and nothing before me indicated these fines still required payment.

Given the above, I grant the Landlord's Application for recovery of these costs and issue a monetary award of \$400.00 to the Landlord under section 67 of the Act.

Though the Landlord included a claim for \$120.00 on their monetary order worksheet and provided what appeared to be a receipt for cleaning for \$120.00, as previously mentioned in this Decision, the Tenants authorized the Landlord to retain cleaning costs in the amount of \$120.00 from the security deposit. Additionally, as the Landlord produced no evidence of any cleaning costs beyond the amount claimed, I make no order in this respect and find this matter has already been settled by the parties.

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

It was undisputed that no move-in condition inspection took place at the start of the tenancy. Therefore, the Landlord has extinguished their right to claim against the security deposit, per section 24 of the Act.

However, Per Policy Guideline 17 – Security Deposit and Set Off, a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file against the deposit for monies owing under section 67 of the Act.

Though the Landlord has extinguished their right to claim against the security deposit under section 24(2) of the Act so can not make a claim under section 38 of the Act to retain the security deposit, as I have made a payment order in favour of the Landlord under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlord to retain \$520.00 (\$400.00 + \$120.00) from the Tenants' security deposit in satisfaction of the payment order under section 72(2)(b) of the Act.

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

As both parties were at least partly successful in their Applications, I find both are entitled to recover the \$100.00 for the filing fee under section 72 of the Act. However, as these amounts offset, I make no orders for payment.

Conclusion

The Tenants' Application is granted.

The Landlord's Application for compensation for damage to the rental unit and unpaid rent is dismissed without leave to reapply. The Landlord's Application for recovery for other losses 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 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 security deposit, plus interest	\$1,532.07
Double security deposit	\$1,500.00
Less: authorized deduction for cleaning costs	(\$120.00)
Less: strata fines	(\$400.00)
<b>Total</b>	<b>\$2,512.07</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: January 24, 2024

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Residential Tenancy Branch