



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      Landlord: MNDL-S, MNDCL-S, FFL  
Tenants: MNSDB-DR, FFT

### Introduction

This hearing was reconvened from a hearing on September 28, 2023 regarding the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$2,625.00 to repair the damage that the Tenants, their pets or their guests caused during the tenancy pursuant to sections 32 and 67 of the Act;
- compensation of \$3,500.00 for monetary loss or other money owed pursuant to section 67 of the Act;
- authorization to retain the security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the Landlord's filing fee from the Tenants pursuant to section 72(1) of the Act.

The Tenants applied for:

- return of double the security deposit and/or pet damage deposit in the amount of \$6,000.00 pursuant to sections 38 and 38.1 of the Act; and
- authorization to recover the Tenants' filing fee from the Landlord pursuant to section 72(1) of the Act.

An interim decision in this matter was issued on October 9, 2023. This decision should be read together with the interim decision.

The Landlord's agent GS and the Tenants attended this reconvened hearing. Also in attendance were the Landlord's witnesses, MS and SJ, as well as the Tenants' witness DW. All attendees gave testimony under oath.

### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to retain the security and pet damage deposits?
4. Are the parties entitled to recover their filing fees?

### Background and Evidence

While I have turned my mind to all the evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on March 1, 2022 with a previous owner of the property. Rent was \$3,000.00 due on the first day of each month. The Tenants paid a security deposit and pet damage deposit of \$1,500.00 each. The Landlord acquired the rental property in April 2022.

On September 30, 2022, the Tenants gave the Landlord written notice to end tenancy effective October 30, 2022. The Tenants also provided a forwarding address on their notice to vacate, which was received by GS in person on September 30, 2022.

According to the Landlord, the Tenants did not vacate the rental unit until November 2, 2022. The Tenants submit that they left on October 31, 2022.

The parties did not attend any inspections of the rental unit or complete a condition inspection report.

The Landlord made its application on January 15, 2023. The Landlord seeks compensation of \$2,625.00 for damage, as well as \$3,500.00 for loss of rental income.

GS gave the following testimony and evidence on behalf of the Landlord:

- The Tenants had given a 30-day notice to end the tenancy and had to leave the rental unit by October 30, 2022. Relying on the Tenants' notice, the Landlord rented the unit to a new tenant, MS, effective October 31, 2022.
- However, the Tenants did not vacate the rental unit until November 2, 2022, and the Landlord lost the new tenant. JW's text proves that the garbage bin was left at the property on November 2, 2022.
- MS had gone to check the rental unit on November 1, 2022 and saw lots of garbage, so he refused to move in. GS and his friend went to check on the unit after receiving MS's call. The Landlord had to return MS's money, which was

paid in cash, and the rental unit sat empty for a month because of the Tenants. The Landlord claims compensation of \$3,500.00, which was the new monthly rent that the Landlord had agreed to with MS. The Landlord provided a copy of the tenancy agreement signed with MS. The rental unit was eventually rented to a different tenant on December 1, 2022 for \$3,000.00 per month.

- The Tenants left drywall damage, including patches, holes, and punches in the walls, both upstairs and downstairs, as well as little holes in the washrooms. The Tenants left behind a couch and a mess on the floor. The Tenants had lots of garbage on the balcony. There was clear wear and tear in the rental unit, which was acknowledged. The Landlord hired SJ's company to repair drywall damage, clean the rental unit, and fix the damaged railing. The Landlord provided a \$2,625.00 invoice from SJ's company dated November 3, 2022, for "boarding & taping". SJ's company did not list all the items in the invoice due to potential tax issues. The Landlord had the rental unit deep cleaned and then tried to rent it out. The Landlord found the new tenant through word of mouth without putting up advertisements.
- GS had texted Tenant BW 3 times before the tenancy ended to arrange a move-out inspection, including on October 19 and 20, 2022, but the Tenants did not agree to let GS come to the rental unit. MS had gone to look at the rental unit on October 26, 2022, but the Tenants did not let MS in.
- The Tenants' forwarding address is a shop address. GS went there and talked to the owner, who claimed that he did not know the Tenants.

MS confirmed that he had agreed to rent the rental unit and had paid deposits of \$3,000.00 in cash. MS indicated that he and GS trusted each other because they are of the same ethnicity. MS confirmed that he went by the rental unit on November 1, 2022 and saw that the Tenants had not yet moved out, and the place was trashed. MS stated that he called GS and asked to get his money back, which GS did. MS denied that he was friends with or had known GS previously. MS stated that he is a student and was previously living at a friend's place. According to MS, he had to beg his friend to let him stay because he couldn't move into the rental unit. MS stated that he did not move out of his friend's place until December 2023.

SJ explained that his company does drywall work, boarding, taping, clean-up, and some renovation. According to SJ, his company was hired by the Landlord to fix drywall patches, such as in the upstairs bathroom, clean up a lot of garbage, and fix the outside railing. SJ stated that the damage to the drywall was caused manually, like punching or hitting, instead of by the weather or climate. SJ explained that drywall work requires filling patches, putting mud on, doing sanding, and waiting for the mud to dry. SJ does

not recall how much time he spent on the job. SJ stated that he does many jobs a year so it is hard to remember. SJ stated that he saw the rental unit on the morning of November 3, 2022, issued the invoice as a quote, and started the job in the evening of the same day. SJ confirmed that his company was paid in cash.

Tenant JW testified as follows:

- Neither the previous landlord nor the Landlord had requested a move-in inspection. The Landlord did not give the Tenants any notice for a move-out inspection. The effective date on the Tenant's notice to end the tenancy was a typo and was supposed to be October 31, 2022, as there are 31 days in October.
- The Tenants were supposed to have their rental truck in the morning of October 31, 2022, but it was delayed until noon. The Tenants loaded everything on the truck and were out by around 1:00 pm on October 31, 2022. The truck was returned on October 31, 2022. The garbage bin on the property is from JW's business and was left there for a couple of days. JW had told GS that other tenants could use it. It was out of the way on the grass. The rental unit was cleared out. The Tenants moved their belongings to the carport in case new tenants were moving in. Nobody showed up on October 31, 2022.
- The date and timestamps on the Landlord's photos cannot be verified. The Landlord provided a photo dated 12:32 pm on November 1, 2022 which shows a different car parked on the grass and no garbage bin in front of the house.
- There were no viewings for the property. MS never saw the house and allegedly paid deposits of \$1,500.00 on rent of \$3,500.00, when the deposits should have been half the rent. MS drove by on November 1, 2022 said the place was trashy. MS did not say that the rental unit was full of belongings. MS stayed where he was and did not move for a full year later, even though the rental unit would have been available shortly after.
- The repairs invoice was dated 3 days after the Tenants moved out. The invoice does not mention what the Landlord said was done and the excuse was that they did not want the government to know that they were doing something shady.
- The Tenants made an application for dispute resolution in December 2022 that was dismissed with leave to re-apply due to insufficient information about the change in ownership of the property. The Landlord made its application after being served with the Tenants' application, seeking amounts that just conveniently cover the double deposits requested by the Tenants.
- The Tenants' forwarding address is a legitimate address where the Tenants can and are still receiving mail.

Tenant BW testified as follows:

- BW did not receive text messages for an inspection from GS. The phone number referred to by GS does not belong to BW.
- The vehicle parked in the driveway in the Landlord's photo could have been the neighbour's vehicle. The models are the same, but BW's vehicle is black and the neighbour's vehicle is grey.
- There was no damage in the rental unit and it was cleaned. Everything was moved out on October 31, 2022 when the truck came.

The Tenant's witness DW, who is JW's son and BW's brother, confirmed that he helped the Tenants move out of the rental unit on October 31, 2022.

### Analysis

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.

#### *1. Is the Landlord entitled to compensation for damage to the rental unit?*

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under section 32(3) of the Act, a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear.

In this case, I find the Landlord has not provided sufficient evidence to prove that the Tenants or a person permitted onto the property by the Tenants had caused drywall or balcony railing damage during the tenancy. I find the Landlord has not submitted any photos showing drywall damage in the rental unit, such as holes, patches, or damage made by punches. I note the Tenants are not responsible for damages from prior to the start of the tenancy or for the cost of refreshing walls that have reasonable wear and tear. Additionally, I find there is no evidence about the age of the balcony railing or its condition at the start of the tenancy. I find the Landlord has not proven that more likely than not, the missing wood pieces were intentionally or negligently removed, instead of having fallen off due to other causes such as deterioration from weather or age. Therefore, I am not satisfied that the Tenants are responsible for reimbursing the Landlord for the \$2,625.00 invoice.

Nevertheless, I find the Tenants did not leave the rental unit reasonably clean as required under section 37(2)(a) of the Act. Based on the Landlord's photos and the parties' text message correspondence, I find there was a couch left behind in the rental unit, some LED light strips left on the walls, and dirty floors in two rooms with garbage. As such, I find the Landlord is entitled to compensation for remediating these items under section 67 of the Act. Although the Landlord indicates that cleaning was included in the \$2,625.00 invoice, I find there is no such description or breakdown for the cost of cleaning or garbage disposal. I find the Landlord also did not provide clear evidence about the amount of time spent for cleaning up the rental unit. Therefore, I find the Landlord is entitled to nominal damages of \$100.00 for cleaning and garbage disposal. As explained in Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, nominal damages are a minimal award, and may be awarded where no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord nominal damages of \$100.00 for cleaning and garbage disposal.

*2. Is the Landlord entitled to compensation for monetary loss or other money owed?*

Pursuant to section 45(1) of the Act, a tenant in a month-to-month tenancy may end the tenancy by giving the landlord at least one clear month's written notice (not 30 days' notice), and the effective date must be the day before the day that rent is due under the tenancy agreement.

Under section 53 of the Act, an incorrect effective date is automatically deemed to be the earliest day that complies with the required notice period.

I find the Tenants gave the Landlord a written notice to end the tenancy on September 30, 2022, with an effective date of October 30, 2022. I find that under section 45(1) of the Act, the earliest day the Tenants could have legally ended the tenancy was October 31, 2022. Pursuant to section 53 of the Act, I find the effective date of the Tenants' notice was automatically corrected to October 31, 2022.

Section 37(1) of the Act states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

I have reviewed the Landlord's photos and I do not find them to show a clear discrepancy such that the date and timestamps cannot be relied upon. I find the Landlord's photos show that the garbage bin did not remain in the same position and was being moved around.

I find the Tenants and their witness's testimonies that the rental unit was cleaned and vacated by October 31, 2022 to be contradicted by the Landlord's photo evidence. Based on the Landlord's photos, I find that in the morning of November 1, 2022, the lights in the rental unit were on, the Tenants' rental truck and garbage bin were still outside, and there were items on the balcony that were later removed. I find the garbage bin remained on the property and JW acknowledged this in a text message dated November 2, 2022. Therefore, I find that more likely than not, the Tenants did not fully vacate the property until November 2, 2022.

While I do not find the Tenants to have vacated the rental unit on time, I am not satisfied that this delay caused the Landlord to suffer a loss of \$3,500.00.

I am doubtful that the tenancy agreement between the Landlord and MS was likely a *bona fide* transaction, considering that I find:

- MS had not viewed the rental unit before purportedly agreeing to the tenancy.
- Neither MS nor GS attended the rental unit on October 31, 2022, the purported start date of the tenancy.
- The exterior of the property appeared to be in similar conditions on November 1, 2022 as it was in October 2022, as evidenced by a photo that the Landlord texted to the Tenants on October 14, 2022.
- The Landlord agreed to refund MS's deposits in full, despite MS having allegedly agreed to pay \$500.00 more in rent than both the Tenants and the Landlord's eventual tenant, with whom another tenancy agreement was signed shortly thereafter on November 5, 2022.
- MS stayed at his original residence and did not move out for at least another year.

I find there is no corroborating evidence such as text messages or other written communication records with MS, or bank statements showing a deposit or withdrawal of cash relating to MS's deposits. I find there is no evidence that the Landlord had shown the rental unit to any potential tenants before the tenancy ended.

Even if I were to accept the tenancy agreement with MS was not a sham, I am not satisfied that the Landlord acted reasonably to mitigate its losses by agreeing to cancel the agreement with MS entirely and refund the deposits.

Under section 7(2) of the Act, a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, regulations, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I do not find the rental unit to have been left in conditions that reasonably required the Landlord to spend the remainder of November cleaning and performing repairs. I find the Landlord could have mitigated its losses by completing these tasks as soon as possible so that MS could still move in, possibly a few days later. I find there is no evidence of any discussion between GS and MS to adjust the start date. As mentioned above, I find MS did not move out of his original residence until much later. Therefore, I do not find the Landlord to be entitled to compensation of \$3,500.00 from the Tenants.

I find the Tenants remain liable to compensate the Landlord for overholding on the property to November 2, 2022. Under section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant



occupies the rental unit after the tenancy is ended. This includes compensation for the use and occupancy of the rental unit on a *per diem* or daily basis. I find the Landlord is entitled to compensation of \$200.00, or \$3,000.00 × 2/30 days, for 2 days of overholding by the Tenants.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$200.00 under this part.

*3. Is the Landlord entitled to retain the security and pet damage deposits?*

Pursuant to sections 24, 36, and 39 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations.

Under section 23 of the Act, the landlord and tenant must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord must offer the tenant at least two opportunities for inspection. The landlord must also complete a condition inspection report and give the tenant a copy of that report in accordance with the regulations. Under section 35 of the Act, there are similar requirements for an inspection and report at the end of the tenancy.

Under sections 24(2) and 36(2) of the Act, unless the tenant has abandoned the unit, the right of a landlord to claim against a security deposit or pet damage deposit for damage to the residential property is extinguished if the landlord does not comply with the requirements for inspections and the condition inspection report at the beginning or end of the tenancy.

Based on the evidence presented, I find there was no move-in inspection and the Tenants were not offered two opportunities for an inspection. Therefore, I find the Landlord's right to claim against the security deposit for damage to the residential property was extinguished under section 24(2) of the Act.

Extinguishment means the Landlord may only apply to claim against the security deposit or obtain the Tenants' consent to deduct from the deposit for a claim other than damage to the residential property. The Landlord may still file a monetary claim against the Tenants for damage to the residential property after returning the security and pet damage deposits.

Under section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Landlord received the Tenants' forwarding address in writing on September 30, 2022. I note there is no requirement that a forwarding address must be a residential address. I further note the Landlord did not write the correct postal code on a package that the Landlord had attempted to mail to the Tenants' forwarding address.

I find the Landlord had until November 15, 2022, or 15 days after the tenancy ended, to return both deposits to the Tenants, or make an application to claim against the security deposit for a claim other than damage to the residential property. I find the Landlord did not return the deposits to the Tenants at all and did not make this application until January 15, 2023. Therefore, I find the Landlord did not comply with section 38(1) of the Act.

Under section 38(6) of the Act, if a landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the deposits.

Based on the foregoing, I find the Landlord is deemed to be holding double the security and pet damage deposits, or \$6,000.00, in trust for the Tenants. This amount is to be offset against the compensation awarded to the Landlord in this decision, with any balance left over to be returned to the Tenants, if the Tenants' right to the deposits has not been extinguished under the Act.

I find the Tenants' right to the return of the deposits has not been extinguished. I find the Tenants were not given at least two opportunities for a move-in or move-out inspection in accordance with the Act and regulations, which the Tenants then failed to attend. Under section 17 of the regulations, a landlord must give notice of the second opportunity for an inspection to the tenant using the approved form, which is currently the Notice of Final Opportunity to Schedule a Condition Inspection (#RTB-22). Verbal or text message requests do not meet the requirements of a second opportunity for an inspection under the regulations. Additionally, I find the Tenants gave the Landlord a forwarding address in writing within one year of the tenancy end date.

Therefore, I find the compensation awarded to the Landlord in this decision must be offset against double the security and pet damage deposits held by the Landlord, with the balance to be returned to the Tenants.

*4. Are the parties entitled to recover their filing fees?*

The Tenants have been successful in their application, while the Landlord has been partially successful. I find both parties are entitled to recover their filing fees under section 72(1) of the Act.

Conclusion

The Landlord's claims for compensation and recovery of the filing fee are partially granted in the amount of **\$400.00**. The remaining amounts sought by the Landlord are dismissed without leave to re-apply.

The Tenants are entitled to return of double the security deposit and the recovery of their filing fee, less the total awarded to the Landlord in this decision.

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order of **\$5,700.00**, calculated as follows:

Item	Amount
<b>Amount Payable by Landlord to Tenants</b>	
Double the Security and Pet Damage Deposits (Pursuant to section 38(6) of the Act, \$3,000.00 × 2)	\$6,000.00
Tenants' Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$6,100.00</b>
<b>Less Amounts Payable by Tenants to Landlord</b>	
Nominal Damages for Cleaning and Garbage Disposal	- \$100.00
Compensation for Overholding to November 2, 2022 (\$3,000.00 × 2/30 days)	- \$200.00
Landlord's Filing Fee	- \$100.00
<b>Subtotal</b>	<b>- \$400.00</b>
<b>Balance to be Returned by Landlord to Tenants</b>	<b>\$5,700.00</b>

This Order must be served on the Landlord as soon as possible. This Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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: February 18, 2024

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Residential Tenancy Branch