



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on February 13, 2024 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; 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 tenants for the cost of the application.

Both landlords and one of the named tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and the tenant called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions. The parties agree that all evidence has been exchanged, all of which is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** (PO) testified that this fixed-term tenancy began on August 1, 2022 and reverted to a month-to-month tenancy after July 31, 2023. The tenants moved out on October 23, 2023. Rent in the amount of \$1,650.00 was due on the 1<sup>st</sup> day of each month. On July 31, 2022 the landlords collected a security deposit from the tenants in the amount of \$825.00 and collected a pet damage deposit from the tenants in the amount of \$500.00 in August, 2022. Both deposits are still held in trust by the landlords. The rental unit is a basement suite, and the landlords reside in the upper level of the house. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that no move-in or move-out condition inspection reports were completed. The landlords received the tenants' forwarding address in writing on November 1, 2023.

The tenants didn't give notice to end the tenancy. In September, 2023, the tenant advised that she would like to move and the landlord replied that the tenant needed to give 1 months notice in writing. The tenant messaged back saying she just got a new place that's cheaper, but the landlord did not respond.

On September 4, 2023 the landlord sent a text message to the tenant saying that the rental unit would be shown the following Tuesday at 4:30.

The landlords claim rent for the month of October, 2023 in the amount of \$1,650.00.

The rental unit had a smoke detector in each room but 2 were missing from the bedrooms. The landlords have provided a copy of a Home Depot receipt dated October 27, 2023 in the amount of \$117.96, which the landlords claim from the tenants.

The tenants were given 2 keys at the beginning of the tenancy but neither was returned to the landlords and 1 was broken inside the lock. The landlords have provided a Home Depot receipt dated October 24, 2023 in the amount of \$107.00, and does not know why the amount is so high. The landlord had to get someone to fix it.

The dishwasher was also damaged at the end of the tenancy. Something broke and it was pulled out from under the counter. Photographs have also been provided for this hearing, as well as an Invoice in the amount of \$288.75 dated October 29, 2023, which

also includes installing the 2 smoke detectors. The door of the dishwasher wasn't latching, and the landlord hired someone to repair it. The landlord tried it and it wasn't working. The house was built 5 years ago and all appliances were new.

**The second landlord** (JO) testified that the parties had a landlord and tenant relationship, not a personal relationship. Rent is to be paid. The landlords follow rules to keep the landlord/tenant relationship going.

The house was very unkept; laundry was not kept well. The landlords did the cleaning but are not making a claim for that.

The tenants pulled out the fire alarms, which should have been put back but were not found. No keys were found either.

**The tenant** testified that this was the first tenancy since separation from the tenant's spouse. The tenants had 2 kids and were ideal tenants and clean. The only thing formal between the parties was the written tenancy agreement, and all communication was by text messaging.

When the tenant gave notice to end the tenancy, the tenant expressed that she was not sure how to do it formally and gave the landlords an opportunity to explain, but they didn't say anything. The tenant thought it was fine, paid for a moving truck and paid a security deposit for a new place. On October 1, 2023 the tenant was totally moved out, and then the landlords said that the tenant had to pay \$1,650.00 by the end of the day, while the tenant was still cleaning. The tenant didn't have that money.

The tenant and another person moved the fridge and cleaned behind it, and the dishwasher was used on October 1 and it was working. The landlord's photographs do not depict the dishwasher as it was left by the tenant.

The landlords were not diligent about rules before, and are now pushing for damages because it suits them. The tenants have also provided photographs, which the tenant testified were taken on October 1, 2023.

The tenant took the smoke detectors down because the tenant read online that they should be taken down when moving out.

With respect to keys, the tenant testified that the tenant had 1 key to get in and out of the rental unit. The garage key was broken in the winter time, so the tenant didn't use it. The door key was fine and the tenant left it on the table.

**The tenant's witness** (JA) testified that he is the tenant's boyfriend and was present at move-out. The dishwasher was used the day of move-out, or perhaps the day before and was working fine. The witness was involved in cleaning, and testified that the smoke detectors were taken off the bases but left in the house; 1 in a closet and 1 in a bedroom. The tenant and witness forgot to put the smoke detectors back, an honest mistake. They were removed because they were going off one day.

The witness did not live on the rental property but visited. The witness hangs out with the tenant and was helping her clean. The landlords' photographs are a complete lie.

#### SUBMISSIONS OF THE LANDLORDS:

The landlords don't cheat or defraud people. The landlord is a social worker and works. The tenant is required to give a notice to end the tenancy and return the keys.

#### SUBMISSIONS OF THE TENANT:

None

#### Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. There is no question that the landlords did not ensure either of the reports was completed, and therefore, I find that the landlords' right to make a claim against the deposits for damages is extinguished.

However, a landlord's right to make a claim against the security deposit for unpaid rent is not extinguished.

A tenant is required to provide 1 month's notice to end a tenancy in writing the day before the date that rent is payable under the tenancy agreement and must be effective at the end of the rental period. In this case, rent was payable on the 1<sup>st</sup> day of each month. The tenant gave notice to end the tenancy by text message on September 4, 2023 effective October 1, 2023. If the tenant had given the notice by a letter to the landlords on September 4, 2023, the notice would not have been effective until October 31, 2023. Therefore, I find that the landlords have established a monetary claim as against the tenants for unpaid rent for October in the amount of **\$1,650.00**.

The law also states that a landlord may only claim a pet damage deposit for damages caused by a pet. In this case, the landlords claim damages of loss of keys, smoke detectors and a dishwasher, none of which can be considered to be damages caused by a pet.

A landlord must return a security deposit and/or pet damage deposit 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. If the landlord fails to do so, the landlord must repay the tenant double the amount. Therefore, the landlords ought to have returned the pet damage deposit to the tenants. The landlord testified that the tenants' forwarding address in writing was received on November 1, 2023 and the tenant moved out of the rental unit on October, 2023. Since the landlords have not made a claim against the pet damage deposit for damages caused by a pet, I find that the tenants are entitled to double the amount, or **\$1,000.00**.

The landlords' right to make a claim for damages is not extinguished. In order to be successful, the landlords must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. mitigation.

In this case, the landlords claim \$825.00 for damages, including \$288.75 for installing the smoke detectors and dishwasher repairs, and have provided an Invoice for that service dated October 29, 2023. The landlords have also provided 2 Home Depot receipts for \$117.96 for replacing the smoke detectors and \$107.00 for the cost of keys.

I have reviewed all of the evidence, including photographs and text messages. The landlord's photographs were taken on October 12, 2023, which is almost 2 weeks after the tenants vacated the rental unit. The tenants' photographs were taken on October 1, 2023, the day the tenants vacated. The landlord testified that the dishwasher was pulled away from the counter and required repair, but the Invoice doesn't indicate what required repairing. The tenant and the tenant's witness both testified that the dishwasher was used the day the tenants vacated the rental unit, and the tenants' photograph shows that the appliance is under the counter where it belongs. It is unclear what may have happened between October 1 and October 12, 2023, but I am not satisfied that the landlords have established that the tenants failed to comply with the *Act* by repairing damage caused to the dishwasher. I dismiss the landlords' claim for the Invoice.

I also find it very difficult to believe that 2 keys cost the landlords \$107.00. That is much too extravagant, and the landlords did not explain why. If the landlords changed the locks to a different mechanism or something similar, that is not the responsibility of the tenants. The tenants have provided evidence that keys would cost \$4.78 each. The tenant testified that 1 key was broken a long time ago, and the other was left at the rental unit. The landlord testified that neither the smoke detectors nor the keys were located after the tenants departed. A tenant is required to provide the landlord with all keys that were provided to the tenant. Leaving a key in a rental unit is not a secure way of returning keys. I find that the landlords are entitled to **\$10.70** ( $\$4.78 \times 2 = \$9.56 +$  taxes of  $\$1.15 = \$10.70$ ).

The tenants do not deny removing the smoke detectors, and I am satisfied that the landlords have established a claim of **\$117.00**, however having dismissed the Invoice for installation, and the Invoice not being separated from the dishwasher repair, the landlords are not entitled to recover any portion of the Invoice for installation of the smoke detectors.

The 2 Home Depot receipts and the Invoice provided by the landlords add up to \$513.71 and the landlords did not explain why the claim for damages is \$825.00. A ball-park figure is not proof of anything, and I find that the landlords made that amount of a claim because the security deposit is that amount.

Having found that the landlords are entitled to **\$1,650.00** for rent for October, 2023, I order the landlords to keep the \$825.00 security deposit in partial satisfaction, leaving \$825.00 outstanding. Having found that the landlords have also established claims of **\$10.70** for keys and **\$117.00** for smoke detectors, I also order that since the tenants are entitled to recovery of double the pet damage deposit, or \$1,000.00. Since the landlords have been partially successful with the application the landlords are also entitled to recover the **\$100.00** filing fee from the tenants, for a total of \$1,052.70, less the pet damage deposit of \$1,000.00.

I order the landlords to keep the \$825.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants in the amount of \$52.70. The tenants 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 order the landlords to keep the \$825.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the **Residential Tenancy Act** in the amount of **\$52.70**.

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: February 16, 2024

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Residential Tenancy Branch