



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding ITAL DÉCOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDS-DR, FFT  
                             MNDL-S, LRSD, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlords.

The tenants have applied by way of the Direct Request process for a monetary order for return of all or part of the security deposit, and to recover the filing fee from the landlords for the cost of the application, which was referred to this participatory hearing, joined to be heard with the landlords' application.

The landlords have applied for a monetary order for damage to the rental unit or property, an order permitting the landlords to keep the security deposit, and to recover the filing fee from the tenants.

Both tenants and both landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, one of the landlords testified that all evidence has been exchanged, which was not disputed by the tenants. Therefore, all evidence provided has been reviewed and the evidence I find relevant to the applications is considered in this Decision.

### Issue(s) to be Decided

- 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?

- Have the tenants established a monetary claim as against the landlords for return of all or part of the security deposit?

### Background and Evidence

**The first landlord** (CB) testified that this month-to-month tenancy began on December 1, 2021 and ended on October 31, 2023 after notice to end the tenancy was given by the landlords. Rent in the amount of \$2,600.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On December 1, 2021 the landlords collected a security deposit from the tenants in the amount of \$1,300.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing.

The rental unit was in a brand new building. At the end of the tenancy there was a hole through a built-in cabinet from the front to the side. The landlords also had to fix 2 chips in the new granite countertop, and there were no chips at the beginning of the tenancy. The control panel on the dishwasher was cracked and there were dents in the door. Numerous photographs has been provided for this hearing.

The landlords have also provided a copy of a Notice of Bylaw Infraction from the strata setting out an infraction involving the tenants' pet and citing a fine in the amount of \$200.00, which the landlords claim against the tenants.

**The second landlord** (MT) testified that the landlords received the tenants' forwarding address in writing on December 1, 2023 and again on December 8, 2023.

No move-in condition inspection report was done, however the landlord completed a move-out condition inspection report with one of the tenants, and a copy has been provided for this hearing. It shows markings at move-in, not move-out, however the landlord testified it is meant to show the condition at move-out. It is not signed by a landlord or by a tenant.

The landlords have provided a Monetary Order Worksheet setting out the following claims for damages:

The Following Damages are:	Materials	Labour
Damage to two-bedroom walls required filling and painting.	68.20	135.00

Master bedroom closet vanity damaged to front and inside drawer and side.	268.00	367.50
Master bedroom patio door handle pickup and delivery	Free	130.00
By Law infraction Dog relieving himself in the lobby	200.00	
Kitchen countertop	200.00	130.00
Dishwasher control panel cracked and dents in the door	216.57	260.00
Total Compensation of Materials and Labour	\$952.77	\$1,022.00

The landlord testified that in addition to the above claims, the landlords claim \$200.00 for painting, \$68.00 for material and the rest is for labour. The tenant offered to do the painting, then agreed for the landlords to do it.

**The first tenant** (CH) testified that the tenants provided a forwarding address in writing on November 14 or 15, 2023 and the 2 dates that the landlord mentioned in December, 2023. The first time, the address was left at the landlord's door in a package. It was initially served by text message or email, then the tenant's partner handed it to the landlord.

No move-in condition inspection was completed, and nothing was signed at move-out. There was 1 chip in the countertop originally. The tenant asked for a quote but the landlord came back with several more claims. The tenant told the landlord to be specific and the tenant offered to fix the drawer in the closet in the main bedroom. Only the front of the drawer needed to be repaired. The tenants found a cabinet drawer for \$150.00 and delivered it to the landlords' door.

Painting is normal wear and tear, and the tenant offered to do so but the timing didn't line up with the current tenant, so the tenant agreed to take the cost of labour and paint off the security deposit, as well as the strata fine.

The dishwasher was in good working order at the end of the tenancy.

**The second tenant** (RL) testified that the tenants did not agree to fix the entire cabinet; the landlord wanted to replace it.

#### SUBMISSIONS OF THE LANDLORDS:

The photographs provided by the landlords were taken on October 30, 2023, and the rental unit was re-rented for November 1, 2023.

#### SUBMISSIONS OF THE TENANTS:

The forwarding address was given directly to the landlord (MT) and another package to the other landlord on the 14<sup>th</sup> or 15<sup>th</sup> of November.

#### Analysis

Firstly, the *Residential Tenancy Act* puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed with the tenants, and the regulations go into detail of how that is to happen. If the landlord fails to do so, the landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished. In this case, neither of the reports was completed in accordance with the regulations, and therefore I find that the landlords' right to claim against the security deposit for damages is extinguished.

A landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit and/or pet damage deposit to the tenant, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s) to the tenant.

In this case, the tenancy ended on October 31, 2023 and the landlord testified that the tenant's forwarding address was received in writing on December 1, 2023. Since the landlord's right to claim against the security deposit for damages is extinguished, and the landlords' only claim is for damages, I find that the tenants are entitled to double the amount of the security deposit of \$1,300.00, or \$2,600.00. The tenants are also entitled interest from December 1, 2021 to the date of this hearing, March 15, 2024 on the original amount, which I have calculated to \$32.71.

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. what efforts the landlords made to mitigate any damage or loss suffered.

I have examined the landlords' photographs, and I note damages. A tenant is required to leave a rental unit clean and undamaged at the end of a tenancy and to repair any damage caused by the tenant. Therefore, I find that the landlords have satisfied elements 1 and 2 in the test for damages.

However, the landlords have not provided proof of the cost of any of the damages claimed except the strata fine, which the tenants do not dispute. There are no receipts, invoices, estimates or quotes, and I find that the landlords have failed to satisfy element 3 in the test for damages for the balance of the landlords' claim.

Having found that the tenants have established a claim of \$2,632.71, and the landlords have established a claim of \$200.00 for the strata fine, I set off those amounts and I grant a monetary order in favour of the tenants for the difference of \$2,432.71. The landlords 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 the Court.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords named in the tenancy agreement, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,432.71.

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: March 15, 2024

---

Residential Tenancy Branch