



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: **MNRL-S, MNDCL-S, LRSD, FFL**
 Tenants: **MNDCT, FFT**

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit under sections 26, 38, 46, and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit under sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenants' cross application under the Act for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Landlord G.D. and Landlord G.K. attended the hearing for the Landlords.

Tenant K.B. and Tenant H.K. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were deemed served on December 25, 2023, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the

registered mailing. The Landlords provided a Canada Post customer receipt with a tracking number attesting to this service. The Tenants confirmed receipt.

I find that the Landlords were deemed served on April 7, 2024, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Tenants provided the Canada Post tracking number attesting to this service. The Landlords confirmed receipt.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

Issues to be Decided

Landlords:

1. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?
2. Are the Landlords entitled to compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
3. Are the Landlords entitled to recovery of the application filing fee?

Tenants:

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 15, 2023. The fixed term was to end on October 31, 2024. Monthly rent was \$2,550.00

payable on the first day of each month. A security deposit of \$1,275.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlords testified that the Tenants provided notice to vacate the rental unit on November 25, 2023 by email. The notice said the Tenants would vacate on December 2, 2023; the Tenants vacated on November 30, 2023. The Landlords seek rent for December 2023 (\$2,550.00), and for three days in January 2024 (\$246.77). The Landlords secured new tenants who began their tenancy on January 4, 2024 with the same rent amount as the Tenants were paying.

The Landlords submitted that utilities were not included in the rent. A copy of the tenancy agreement and addendum was uploaded, and support that utilities are the responsibility of the Tenants. The Landlords uploaded December 2023's utility bill. The Landlords seek unpaid utilities for December 2023 totaling \$15.90.

The Landlords seek \$250.00 to cover the move out fee for the residential property. Section 22 of the tenancy agreement additional terms states, "*The TENANTS agree to pay a \$250 move out fee.*"

The Landlords stated that the strata gave them a contravention fine of \$200.00 on November 30, 2023. The Notice of Decision letter stated that the Tenants of the rental unit did not stop and wait for the gate to close completely before proceeding. The Tenants agreed that they will pay this fine.

The Tenants' cross application claims are:

Item	Amount
moving in costs	\$300.00
moving out costs	\$300.00
cleaning estimate	\$500.00
renting new apartment	\$900.00
disturbance cost	\$2,300.00

The Tenants testified that they were not able to live in the rental unit due to an infestation of cockroaches. The Landlords first offered diatomaceous earth as treatment for the cockroach problem. Later when the Tenants advised this was not making a difference and they wanted professional pest control people, the Landlords organized a first treatment by the pest control company for November 17, 2023. The Tenants showed the pest control company that cockroaches were in the LED stove panel and

other places. The pest control company was unable to access the back of the fridge as the kitchen island was in the way to pull the fridge out.

On November 19, 2023, the Tenants messaged the Landlords saying the “*pest situation is not good.*” The Tenants felt the attitude of the Landlords was worrisome. The Tenants argued that the rental unit was not liveable and was affecting their health, and quiet enjoyment. The Tenants testified that their children’s health and wellbeing was negatively affected.

The Tenants asked the Landlords to sign a Mutual Agreement to End a Tenancy form #RTB-8, but the Landlords declined.

The Tenants argued that the Landlords knew the rental unit had pests before they rented it as the pest control company technician showed them the bait traps and glue-like material used as an attractant placed around the rental unit. The Tenants uploaded pictures showing these bait traps and glue-like material. The Tenants stated they never would have moved into the rental unit if they knew it had a pest problem. The Tenants seek to have the move out fee removed from the Landlords’ claims.

The Tenants uploaded research which discussed diseases spread by cockroaches. Bacterial infections that affect intestinal functions such as salmonella, staphylococcus, and streptococcus can be transmitted by cockroaches. Parasitic worm larvae can cause symptoms such as diarrhea, vomiting, abdominal cramping, and fatigue. The Tenants did not upload any medical documentation that any of these symptoms were affecting them.

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.

Settlement amount

The Landlords were given a \$200.00 strata fine caused by the Tenants’ contravention of the residential property bylaws. The Tenants agreed that they owe this amount. Under section 63 of the Act, I find the parties have settled this portion of the Landlords’ claims.

The Landlords’ monetary award will include the **\$200.00** strata fine.

Are the Landlords entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Section 45 of the Act sets out how and when a tenant in a fixed term tenancy may give notice to end their tenancy. It states:

Tenant's notice

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- (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice,*
 - (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
 - (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

...

The ending of the fixed term in this tenancy was to be October 31, 2024. Due to the cockroach infestation, the Tenants vacated on November 30, 2023. The Landlords seek compensation for unpaid rent for December 2023, and for three days in January 2024. The Landlords secured new tenants who moved into the rental unit on January 4, 2024 paying the same amount of rent that the Tenants owed.

The Tenants were responsible for paying utilities in this tenancy. The unpaid utilities amount for December 2023 is \$15.90.

Based on the testimonies of the parties, and on a balance of probabilities, I find that the Tenants owe unpaid rent and utilities to the Landlords totaling **\$2,812.67**. I order the Tenants to pay this compensation amount to the Landlords for unpaid rent and utilities under section 67 of the Act.

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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 Landlords 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 tenant 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.

The Landlords submitted that the tenancy agreement additional terms states, "The TENANTS agree to pay a \$250 move out fee." I find that the move out fee is the Tenants responsibility, they did agree to it.

I find the Landlords have substantiated this part of their claim, and I grant them a monetary award totaling **\$250.00** for the move out fees which were the Tenants to bear.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "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." This guideline must be read in conjunction with sections 7 and 67 of the Act.

In this case, to prove a loss, the Tenants must satisfy the following four elements on a balance of probabilities:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenants submitted claims for moving in and moving out costs both totaling \$300.00. The Tenants did not provide any receipts that support this \$600.00 claim. The Landlords move out fee is \$250.00, so it is unclear to me how the Tenants can claim \$300.00 for this item. The Tenants have not pointed to a section of the Act, regulation or tenancy agreement that the Landlords have breached.

The Tenants submitted a cleaning estimate cost, but provided no credible testimony supporting this claim. The Tenants also did not provide proof of the amount of this claim.

The Tenants submitted an amount of \$900.00 for renting a new apartment. Again, there was no testimony of what part of the Act, regulation or tenancy agreement the Landlords breached that would make them responsible for this cost.

Based on the testimonies of the parties, and on a balance of probabilities, I find the Tenants have not substantiated these parts of their monetary claim and I decline to award compensation for these items.

The Tenants submitted that their quiet enjoyment under section 28 of the Act during their short tenancy was so negatively impacted by the pest infestation in the rental unit that they could not continue living there. The Tenants did not prove that their physical health was impacted. When the pest control technician attended their rental unit, they pointed out that the rental unit had been previously treated.

I find that the Tenants' quiet enjoyment was breached due to the cockroach infestation in the rental unit. They said if they had known this was an issue in the suite, they would not have moved in. I believe this to be true. I find the Landlords were aware of the pest infestation and failed to take reasonable steps, offering diatomaceous earth, to correct the problem. I find the Landlords were not proactive in their obligations to maintain their rental unit in a state of decoration and repair that complies with health standards.

The Tenants residence in the rental unit was short. I find the Tenants are entitled to compensation for loss of use of the rental unit, and I grant them **\$500.00** which

corresponds to losing their right to quiet enjoyment for the short period they had possession of the rental unit under section 67 of the Act.

As both parties have been successful in their claims, each will bear their own costs for their application filing fees.

Under section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award.

The Landlords' monetary award is calculated as follows:

Item	Amount
Strata fine to Ls	\$200.00
Unpaid rent & utilities to Ls	\$2,812.67
Move out fee to Ls	\$250.00
Less security deposit	-\$1,275.00
Less deposit interest	-\$15.06
Compensation to Ts	-\$500.00
Monetary award to Ls:	\$1,472.61

Conclusion

I grant the Landlords a Monetary Order in the amount of \$1,472.61, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, 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: May 17, 2024

Residential Tenancy Branch