



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### 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 Landlords seek the following:

- 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;
- To retain all, or a portion, of the Tenant's security deposit under section 38 of the Act; and
- To recover the filing fee for their Application under section 72 of the Act.

The Tenant seeks the following:

- The return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application under section 72 of the Act.

The Tenant and both Landlords attended the hearing. The correct legal names of parties were confirmed, to ensure any order issued is enforceable, per Policy Guideline 43.

### 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's evidence, barring the Tenant's video evidence which per their testimony, they did not serve to the Landlords.

Based on their testimonies, I find that each party was served with the Materials and evidence as required under sections 88 and 89 of the Act, with the exception of the Tenant's video evidence, which I exclude from consideration, given it was not served to the Landlords.

### Issues to be Decided

- Are the Landlords entitled to a Monetary Order for damage to the rental unit?
- Are the Landlords entitled to a Monetary Order for loss under the Act, Regulation, or tenancy agreement?
- Are the Landlords entitled to retain all, or a portion of the Tenant's security deposit?
- Is the Tenant entitled to the return of all, or a portion of their security deposit?
- Are either party entitled to cost of the filing fees for their respective Applications?

### 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, 2023 for a fixed term ending June 30, 2024 and continuing on a month-to-month basis thereafter.
- The Tenant vacated the rental unit on December 31, 2023.
- Rent was \$3,100.00 per month due on the first day of the month.
- A security deposit of \$1,550.00 was paid by the Tenant which the Landlords still hold.
- There is a written tenancy agreement, a copy of which was entered into evidence.

### *Replacement Lock*

The Landlords seek \$288.75 for the replacement of the digital keypad and lock of the rental unit. The Landlords testified that the Tenant had changed the lock during the

tenancy and had agreed to re-install it when they vacated, but they did not. They stated if there had been a fault with the lock, the Tenant could have let them know. The locksmith had tried to re-install the lock, but as a part was missing, this was not possible. A copy of an invoice for the repair of the lock was entered into evidence.

The Tenant testified as follows. They removed the lock and replaced it with a new one as the original lock did not work and the numbers on the keypad were no longer visible. They left the original lock with the property manager as requested by the Landlords. A copy of text message correspondence regarding the lock was submitted into evidence.

### *Loss of Rental Income and Property Manager's Commission*

The Landlords seek one and a half months' rent in compensation as the Tenant moved out of the rental unit before the end of the fixed term. They testified that Tenant had contacted them in October 2023 to see if they could move out of the rental unit in December 2023. The Landlords stated they told the Tenant that for this to happen, they would need to provide one month's notice and would need to pay rent for December 2023 as well.

The Landlords hired a property manager to find a new tenant, which cost half a month's rent of \$1,550.00 in commission, which the Landlords also seek to recover from the Tenant. The Landlords did not submit any evidence to support the commission was paid to the property manager, though stated they believe the amount was deducted from the first month of rent paid by the new tenant. The Landlords were able to find a new tenant who signed a tenancy agreement which commenced February 15, 2024, a copy of which was entered into evidence, along with copies of postings for the rental unit on Facebook Marketplace and inquiries relating to the posting.

The Tenant testified that they were assaulted by a neighbour and wanted to end the tenancy early as a result, which the Landlords were sympathetic to. The parties had agreed via text message and email that the Tenant would vacate the rental unit by January 1, 2024, provided written notice was given, which the Tenant stated they did.

They moved out by January 1, 2024 and had paid six months of rent in advance, so rent due December 1, 2023 was already paid. Initially they had asked the Landlords if the tenancy could be ended earlier, and the rent for December 2023 be reimbursed, but the Landlords did not allow this, and they were of the understanding the tenancy would end with no further payments for rent needed.

The Landlords also wanted the Tenant to conduct viewings of the rental unit for prospective tenants as early as October 2023, some of which were to be done via Facetime. The Tenant said they were not comfortable being responsible for showing new tenants the rental unit and asked for the Landlords, or an agent to be present.

In response to the Tenant's testimony, the Landlords stated they agree to end the tenancy with written notice, which was received, but told the Tenant by text message on November 7, 2023 they would be liable if they could not find a new tenant. The Landlords confirmed six months' rent was paid in advance and the Tenant initially sought the return of rent for December 2023. Copy of the text message correspondence was entered into evidence.

### *Security Deposit*

The parties agreed there was no condition inspection report made at either the start of the end of the tenancy. The Landlords acknowledged receipt of the Tenant's forwarding address in writing by text message and registered mail, though the dates of receipt were not known by either party, but the Landlords confirmed the correspondence was received before the Tenant vacated the rental unit.

### 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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

### *Replacement Lock*

Section 31(2) of the Act prohibits a tenant from changing the locks of a rental unit unless the landlord consents to the change. Section 37 of the Act also requires a tenant to leave a rental unit undamaged except for reasonable wear and tear at the end of a tenancy.

It was undisputed the Tenant changed the locks of the rental unit during the tenancy without the permission of the Landlords. Though the Tenant argued the original lock was not working, I found no evidence to corroborate this, nor were there any records of the Tenant reporting the issue to the Landlords or asking for the lock to be replaced.

Additionally, I found the testimony of the Landlords that the original lock, whilst left behind by the Tenant, was not possible to re-fit as a part was missing to be plausible and supported by the invoice for the repair which appears to confirm a new keypad was required.

Given the above, I find the Tenant breached sections 31(2) and 37 of the Act by changing the lock of the rental unit without the Landlords' authorization and failing to leave the original lock in working order. I find Landlords were justified in replacing the lock and that the costs associated with this to be reasonable and clearly evidenced by the invoice. Therefore, I issue the Landlords a monetary award of \$288.75 under section 67 of the Act.

### *Loss of Rental Income*

During a fixed term tenancy, neither the landlord nor the tenant can end the tenancy early, unless specific circumstances apply, however the parties may mutually agree to end the tenancy before the term is reached.

Based on the testimony of both parties and the evidence before me, I find the parties entered into a tenancy for a fixed term ending June 30, 2024, though the Tenant vacated the rental unit in December 2023.

Though neither party entered into evidence copies of the correspondence, based on the testimony of the parties, I find they entered into an agreement via email and text message whereby the tenancy would be ended before the fixed term. I find one of the conditions of ending the tenancy early was that the Tenant would provide written notice to the Landlords. Though a copy of this correspondence was again not entered into

evidence, it was undisputed by the parties that the Tenant had provided this notice to end tenancy.

I also find, per the testimony of the parties, they entered into an agreement whereby the fixed term tenancy was ended early, with no further rent payments to be made by the Tenant. Though the Landlords argued they informed the Tenant they would be responsible for any lost income, and are entitled to claim this loss, I find there are two issues with this argument.

Firstly, I find the message of November 7, 2023 itself does not clearly communicate the Tenant's potential liability. The message reads: "Just a reminder that I forgot to mention in the email, as our lease is a fixed-term lease, you may be still liable for the landlord potential loses due to vacancy of the property during the term..." (sic).

Secondly, I find I must consider the issue of estoppel in this claim. Estoppel is a legal principle under common law which prevents a party from asserting a right that contradicts previous conduct or agreements. Section 91 of the Act confirms that common law applies to landlord and tenants in British Columbia, except where modified by the Act.

I find the November 7, 2023 message was sent after the parties had already agreed to the terms of ending the fixed-term early, and the Tenant was therefore entitled to rely on this agreement and seek an alternative residence. I find Landlords are not entitled to rescind the agreement, given this reliance of the Tenant, and the Landlords are therefore estopped from claiming unpaid rent from the Tenant, given the prior agreement indicating this would not happen.

Given the above, I dismiss without leave to reapply the Landlords' claim for unpaid rent.

#### *Property Manager's Commission*

Though landlords may be entitled to recover losses incurred due to a tenant breaking a fixed term tenancy, such as the costs of re-renting, I find in this case the Landlords are not entitled to recover these purported losses.

Aside from the issue of the finding there was an agreement between the parties to end the tenancy early, I find the Landlords also failed to establish on a balance of probabilities the loss claimed was actually incurred. There was no corroborating

evidence such as invoices or contracts to support the notion the Landlords paid the amount claimed to a property manager.

Further, it was undisputed the Landlords sought to arrange viewings of the rental unit soon after the end of the fixed term was discussed by the parties in October 2023. I find the records of listings on Facebook Marketplace and subsequent messages from prospective tenants entered into evidence by the Landlords, further indicate that there was significant interest in the rental unit before the Tenant vacated, and it was not clear to me why, given this, it was necessary to compensate a property manager for finding a new tenant. Given this, I find the Landlords have not reasonably minimized their losses, which they must do, per section 7(2) of the Act.

Based on the above, I dismiss without leave to reapply the Landlords' claim to recover the cost of their property manager's commission from the Tenant.

### *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.

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.

Based on the undisputed testimony of the parties, I find the Tenant provided their forwarding address in writing to the Landlords before the tenancy ended on December 31, 2023, so the fifteen day timeframe starts from this date. The Landlord submitted their Application on January 15, 2024, so have adhered to the timeframe set out in section 38(1) of the Act, and the doubling provisions of section 38(6) of the Act do not apply.

Though the Landlords have extinguished their right to claim against the security deposit under section 24 of the Act as they did not complete a condition inspection report, 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 Landlords under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlords to retain this amount from the Tenant's security deposit in satisfaction of the payment order under section 72(2)(b) of

the Act. I order the Landlords to return the remainder of the security deposit, plus interest, to the Tenant.

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 \$31.70 using the Residential Tenancy Branch interest calculator using today's date.

### *Filing Fees*

As both parties were at least partially successful in their respective Applications, I find each request to recover the filing fee offsets the other and I make no award in this regard as a result.

### Conclusion

The Landlords' Application for damages to the rental unit is granted. The Landlords' Application for unpaid rent and monetary loss is dismissed without leave to reapply.

The Tenant is issued a Monetary Order for the return of the remainder of their security deposit. A copy of the Monetary Order is attached to this Decision and must be served on the Landlords. It is the Tenant's obligation to serve the Monetary Order on the Landlords. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Return of security deposit, plus interest	\$1,581.70
Less: Landlords' monetary award under section 67 of the Act	(\$288.75)
<b>Total</b>	<b>\$1,292.95</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: May 23, 2024

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Residential Tenancy Branch