



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1360565 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      XX, XX

### **Introduction**

This hearing dealt with the Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") by the Landlord on January 18, 2024, and the Tenant on January 24, 2024.

The Landlord applied for:

- a Monetary Order for unpaid rent under section 67 of the Act
- 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
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant N.D. was served on April 7, 2024, by preagreed email in accordance with section 89(1) of the Act.

I find that Tenant D.O. was served on April 7, 2024, by preagreed email in accordance with section 89(1) of the Act.

I find that the Landlord was served on April 4, 2024, by registered mail in accordance with section 89(1) of the Act. The Tenants submitted copies of a Canada Post registered mail tracking number as proof of service.

### **Service of Evidence**

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

Based on the submissions before me, I find that the Tenants' evidence was not served to the Landlords in accordance with section 88 of the Act. The Landlord's representatives however indicated that they did not object to consideration of the Tenants evidence.

### **Issue(s) to be Decided**

1. Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act
2. Is the Landlord 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
3. Is the Landlord entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act?
4. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenants under section 72 of the Act?
5. Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?
6. Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by both parties indicates that the one-year fixed tenancy began on June 6, 2022, with a monthly rent of \$2,800.00 due on the fifth day of each month. A security deposit of \$1,400.00 was paid and is currently held by the Landlord. The tenancy ended on March 5, 2023.

According to the Landlord's representatives, the Tenants served notice to end the tenancy by email on February 14, 2024, indicating that they intended to vacate the rental unit on March 14, 2024. They testified that because the Tenants did not give the Landlord proper notice, the Landlord is entitled to one month's rent in the amount of \$2,800.00. The representatives also stated that the Landlord is seeking:

- \$472.50 for cleaning and carpet cleaning
- \$37.50 for dump fees for garbage removal
- \$58.74 for a van rental used to transport the garbage
- \$37.96 for 60% of the estimated March 2024 hydro bill

The Landlord's representatives testified that they had to clean and shampoo the carpets of the unit after the Tenants moved out and had to rent a moving van to transport the garbage the Tenants left in a shed and a large filing cabinet the Tenants left in the garage. Copies of invoices and receipts for the cleaning/ carpet cleaning, dump fees and van rental were submitted as evidence by the Landlord.

The Tenants confirmed that they gave notice to end the tenancy on February 14, 2024. They testified that they moved out of the unit on March 1, 2024, because they were given access to their new place early, shampooed the carpets on March 4, 2024, and returned the keys on March 15, 2024. They argued that the unit was left in a spotless condition and that the garbage referred to by the Landlord was garbage that was left in the shed by previous tenants as they had removed their belonging from it soon after moving in due to water leaking on their possessions. They testified that the large cabinet was left at the request of the lower unit tenant who wanted to give it to his parents. The Tenants argued that they were not responsible for hydro use after May 5, 2024, after they cancelled their hydro service effective that date. A copy of a February 14, 2024, notice to end tenancy email was submitted as evidence.

They stated that the Landlord's representative T.V. declined to do a move-out inspection because a move-in was never done. They stated that the unit was left in a spotless condition and that they provided the Landlord a forwarding address on March 15, 2024 but the Landlord's representative T.V. refused to accept it because they had used the rental unit's address so that it would be forwarded to their new address without providing the Landlord with knowledge of their new location due to safety concerns. Copies of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit and Proof of Service Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit forms were submitted as evidence.

The Landlord's representatives testified that the lower tenant said the shed and garage were both used by the Tenants. They confirmed that the keys were returned on March 14, 2024, and that neither a move-in nor move-out inspection were conducted with the Tenants.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?**

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.

Pursuant to section 45(1) of the *Residential Tenancy Act*, a tenant may end a periodic 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, and
- (b) 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.

Schedule 12 of the Residential Tenancy Regulations states:

### **Ending the tenancy**

**12 (1)** The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

*[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*

(2) This notice must be in writing and must

- (a) include the address of the rental unit,
- (b) include the date the tenancy is to end,
- (c) be signed and dated by the tenant, and
- (d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

I find that as the Tenants gave notice to end the tenancy on February 14, 2024, the earliest the tenancy could end the tenancy in compliance with section 45 of the Act and schedule 12 of the regulations, would be April 4, 2024. I find therefore that the Landlord is entitled to compensation in the amount of \$2,800.00 for unpaid rent for the period March 5 to April 4, 2024.

I find that although the Landlord and Tenants both testified that the Tenants were responsible for 60% of the shared hydro and have found the Tenants are responsible for the rent for the period March 5 to April 4, 2024, I find that the Landlord did not provide a copy of the hydro bill for the period March 5 to April 4, 2024 but rather only an estimate of its value and therefore I am unable to determine the amount of the utilities the Tenants are responsible for. I therefore dismiss this portion of the Landlord's claim without leave to reapply.

For the above reasons, the Landlord's application for a Monetary Order for \$2,800.00 in unpaid rent under section 67 of the Act is granted.

**Is the Landlord 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?**

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

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*** The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy *Act* or Manufactured Home Park Tenancy *Act* (the Legislation). **(emphasis added)**

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

I find that the Landlord has not provided evidence to support their testimony that the Tenants did not comply with section 37(2) of the Act by not leaving the unit in a reasonably clean fashion, requiring them to incur cleaning and shampooing costs. I therefore dismiss this part of the claim without leave to reapply.

As the Landlord did not complete a move-in or move-out inspection report I am unable to determine the conditions in the shed at the start of the tenancy versus the condition of the shed at the end of the tenancy.

Based on the testimony of both parties, however, I find that a large filing cabinet was left by the Tenants in the garage which the Landlord's were subsequently required to remove, the Tenants' statement that the tenant in the lower unit wanted it notwithstanding. I therefore award the Landlord a nominal monetary award in the amount of \$48.25 for the cost of removing, transporting and disposing of the filing cabinet.

I find, therefore, that the Landlord is entitled to a monetary award in the amount of \$48.25 under sections 37 and 67 of the Act.

**Is the Landlord entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, are the Tenants entitled to all or a portion of their security deposit?**

At the commencement of the tenancy, the Landlord did not pursue a condition inspection of the suite with the Tenant, as required by section 23 of the Act. (reproduced below)

### **23 Condition inspection: start of tenancy or new pet**

1. The landlord and tenant together 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.
2. The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - a. the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - b. a previous inspection was not completed under subsection (1).
3. The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
4. The landlord must complete a condition inspection report in accordance with the regulations.

5. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
6. The landlord must make the inspection and complete and sign the report without the tenant if
  - a. the landlord has complied with subsection (3), and
  - b. the tenant does not participate on either occasion.

Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not complete a move-in inspection, complete a report and provide a copy to the tenant.

Section 38 of the Act addresses the return of security deposits.

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of  
(a) the date the tenancy ends, and  
(b) the date the landlord receives the tenant's forwarding address in writing,  
the landlord must do one of the following:  
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;  
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord  
(a) may not make a claim against the security deposit or any pet damage deposit, and  
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 38(5) and (6) is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

I find the Landlord did not inspect the suite with the Tenants at the commencement of the tenancy and therefore the Landlord's right to claim against it was extinguished pursuant to sections 23 and 24. Further, the Landlord did not return the Tenants' security deposit within 15 days of being served with the Tenants' forwarding address at the end of the tenancy, contrary to section 38 of the Act.

The wording of section 38(6) is clear and unequivocal. The Tenants have not waived the doubling of the deposits and are entitled to **\$2,848.25**, including interest, in compensation.

Pursuant to section 38(4) of the Act, however, I allow the Landlord to retain the Tenants' full security deposit, including interest, in the amount of \$2,848.25 in full satisfaction of the monetary awards granted to the Landlord above.

**Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?**

As the Landlord was partially successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants is granted under section 72 of the Act.

**Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?**

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

The Landlord and Tenants monetary awards are set off as follows:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a monetary award for the Tenants for the return of double their security deposit from the Landlord under section 38 of the Act	\$2,848.25
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
a monetary award for the Landlord for unpaid rent under section 67 of the Act	-\$2,800.00
a monetary award for the Landlord for monetary loss under section 67 of the Act	-\$48.25
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	-\$100.00
<b>Total Amount</b>	<b>\$0.00</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 *Residential Tenancy Act*.

Dated: July 17, 2024

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Residential Tenancy Branch