



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: **MNDL-S, MNDCL, LRSD, FFL**
Tenants: **MNDCT, MNSD, MNETC, FFT**

Introduction

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

1. A Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed under section 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;
2. An Order for the return of part or all of the security deposit under section 38 of the Act;
3. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under section 51 of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

Landlord D.A., son M.A. attended the hearing for the Landlords.

Tenant E.B. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were deemed served with the Landlords' Proceeding Package on April 28, 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 Landlords uploaded a Proof of Service form #RTB-55 attesting to this service. Tenant E.B. confirmed receipt.

I find that the Landlords were deemed served with the Tenants' Proceeding Package on January 29, 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 uploaded a copy of the Canada Post customer receipt containing the tracking number to confirm this service. Landlord D.A. confirmed receipt.

Service of Evidence

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.

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.

Preliminary Matter

Moot and amended claims

The Tenants' application for 12 months compensation after receiving a Two Month Notice is moot since this issue was previously decided on June 5, 2024. Section 62(4)(a) of the Act states that the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part.

The Landlords point out that the Tenants were granted the recovery of their filing fee with the 12 months compensation claim.

I exercise my authority under section 62(4)(b) of the Act to dismiss the 12 months compensation application, and the Tenants' recovery of their filing fee as part of the Tenants' application in this matter.

The Landlords stated they are not pursuing their compensation for a monetary loss or other money owed claim in this hearing. They said they are pursuing this matter with the assistance of their lawyers. The Landlords request this matter be withdrawn with leave to re-apply. Tenant E.B. submitted that the Landlords monetary claim is in relation to the Two Month Notice, and it is off the table at this point. In accordance with section 64(3)(c) of the Act, I find I am permitted to amend the Landlords' application for dispute resolution, and I do so by withdrawing with leave to re-apply the Landlords' application for compensation for a monetary loss or other money owed.

Issues to be Decided

For the Landlords:

1. Are the Landlords entitled to a Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Are the Landlords entitled to recovery of the application filing fee?

For the 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 an Order for the return of part or all of the security deposit?

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 periodic tenancy began on July 1, 2010. Monthly rent was \$1,100.00 payable on the first day of each month. A security deposit of \$375.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlords said they returned \$143.00, and retained \$232.00 of the security deposit. The Tenants testified that they did not cash the cheque.

The parties agreed that:

- the tenancy end date was February 1, 2023;

- the Tenants gave their forwarding address to the Landlords in writing on the Tenants' move out notice on January 10 or 11, 2023, and also on the move-out condition inspection report on February 3, 2023;
- the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy; and,
- the Tenants agreed to pay for two windows latches, a closet knob, and drip bowls under four stove elements.

The Landlords stated that a move-in condition inspection was not completed because the house was just built. The Landlords uploaded the Final Building Approval from the city dated June 8, 2010.

The parties completed a move-out condition inspection on February 3, 2023, and the Landlords provided a copy of the move-out condition inspection report to the Tenants after the inspection.

The Landlords applied for dispute resolution to keep some or all of the security deposit on April 20, 2024.

The Landlords made the following claims for compensation for repairs to the rental unit:

Window latches:

The Landlords uploaded two receipts for two window latches each. The invoices are duplicates (same invoice number, same dates). Each copy lists two locks \$5, for a total of \$10.50.

The Tenants stated they agreed to this part of the Landlords' claim. On the move-out condition inspection, the Tenants agreed they were responsible for two window latches.

Carpet cleaning:

The Landlords stated that the Tenants did not shampoo the carpets when they vacated the rental unit. Although the Tenants had been living in the rental unit for 13 years, the Landlords stated they are responsible to clean the carpets when vacating. The Landlords referred to Residential Tenancy Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises (PG#1). The Landlords said the carpet was in good condition. The Landlords uploaded an invoice for 'Carpet wash and clean' totaling \$130.00.

The Tenants said the carpets were cleaned during the tenancy, but they were not cleaned at the end of the tenancy. The Tenants said there is no mention in the tenancy agreement that carpets had to be cleaned at the end of the tenancy.

Drip bowls for under stovetop elements:

The Landlords uploaded a receipt for replacement drip bowls under the stovetop elements. The total cost was \$32.42. The Tenants agreed to this cost.

Closet doorknob:

The Landlords purchased a new closet doorknob. The total for this knob was \$5.00. The Tenants agreed to this charge.

Replace missing blind strings:

The Landlords replaced blind strings in one of the bedrooms and in the family room. The Landlords did not point to any of their evidence demonstrating the problem with the blind strings. The total cost for this repair item was \$12.00.

The parties' move-out condition inspection report under the bedrooms or family room does not disclose there is an issue with the blind strings.

The Tenants said they did not agree to this charge. They submit that according to their picture evidence, they do not see that the blind strings need fixing.

Repair window screen:

The Landlords had a window screen repaired. The Landlords' son said if you zoom into the Tenants' evidence file, you can see that the screen is damaged. The total for this repair was \$35.00.

The move-out condition inspection report notes that there is screen damage on a living room window.

The Tenants do not agree with this repair. They stated there was nothing structurally wrong with the screen, and there was no need to replace it.

Housecleaning and repairs:

Landlord D.A. testified that she cleaned the rental unit, and her husband did the repairs. The Landlord uploaded several videos, and some picture evidence about the alleged uncleanliness of the rental unit after the Tenants vacated. The Landlords uploaded some videos about the alleged uncleanliness of the rental unit. Landlord D.A. testified that windows and baseboards were not cleaned, doors were not wiped down, and walls were not wiped down.

Landlord D.A. stated that Landlord B.A. had to take a door down that was chipped. Landlord D.A. submitted that he took the door out, sanded it, painted it, and rehung it. Landlord D.A. said that Landlord B.A. repaired damaged baseboards, sanded them, and re-painted them. The Landlords uploaded a picture of a repaired door and baseboard, but they did not upload a picture of these items when damaged.

Landlord D.A. said there was a hole in ceiling, that had to be repaired. A picture of this hole is evident in one of the videos.

The Landlords seek 30 hours of cleaning and repairs at \$25.00 per hour.

The move-out condition inspection report does not show that the rental unit was left dirty. There are no notations for any of the rooms in the rental unit that were left dirty. The move-out condition report also does note that one door to bedroom #2 was damaged. The move-out condition inspection report does not report that a hole existed in the ceiling that needed to be repaired.

Tenant E.B. said the Landlords' definition of clean, and her definition of clean are different. She stated when they moved into their new rental unit, she cleaned the unit. She knows it was cleaned before she moved in, but she cleaned it to how she wanted it to be clean. If the Landlords wanted the rental unit cleaned with a toothbrush, that does not have anything to do with the Tenants.

The Tenants said all their pictures show that the rental unit was cleaned.

Tenant E.B. said the Landlords probably had to take a door down to repair it from water damage caused by a tub that broke. Tenant E.B. said there was water damage, and damage to mouldings. The Tenants submit that the responsibility to repair damage from a tub leak in the house should not be placed on them.

Landlords' table:

The Landlords testified that they left a table in the rental unit that the Tenants used. Landlord D.A. said they rolled cigarettes and marijuana on it, and they damaged the table. The Landlords purchased the table and chairs set for \$1,000.00 two years before the Tenants moved in. Landlord D.A. said the chairs are fine, it is just the table that is damaged, and the Landlords seek \$600.00 to replace it. The Landlords uploaded a 30 second video showing the state of the table. There are black marks on the wooden top covering a large portion of the table. The Landlords did not produce a receipt for this table 12-year-old table.

The Tenants have a photograph of a small section of the table which does not look damaged. The Tenants stated that the table is included in the home rental advertisement. The Tenants asked, if the table was that damaged why are they including it in the home rental ads?

The Tenants seek double the damage deposit returned to them, less the filing fee which was added in their claim.

The Tenants seek compensation based on an illegal rent increase. Tenant E.B. said that Landlord D.A. came to their door on December 1, 2021, and told them, 'you are going to pay \$100.00 more per month or I'm going to evict you.' The Tenants did pay the \$100.00 more per month starting January 1, 2022. The Landlords issued a Two Month Notice on the Tenants, and the Tenants vacated on January 31, 2023. The month of January 2023, the Tenants did not pay rent as that was their one-month free rent.

The Tenants said that the Landlords were only permitted to raise their rent by 1.5% in 2022. That means their rent should have been \$1,015.00 per month. The Tenants seek \$1,020.00 (\$85.00 X 12) compensation for an illegal rent increase.

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.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the Residential Tenancy Branch (RTB) against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

Further, under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and *Residential Tenancy Regulation* (Regulation).

The Landlords testified that they did not coordinate a move-in condition inspection with the Tenants. Their reason for not doing this was because the rental unit was just built. Under section 23 of the Act, at the start of a tenancy, the landlord and tenant together must inspect the condition of the rental unit, and the landlord must complete a condition inspection report in accordance with the Regulation. I find under section 24(2) of the Act, that the Landlords have extinguished their right to claim against the security deposit for damage to the residential property as a consequence for not completing the report requirements at the start of the tenancy.

The parties participated in a move-out condition inspection on February 3, 2023. The Landlords provided a copy of the move-out condition inspection report to the Tenants on that same day.

Based on the testimony of the parties, I accept the following:

- the tenancy ended February 1, 2023;
- the Tenants provided their forwarding address in writing to the Landlords on January 11, 2023 in their move out notice, and on February 3, 2023 on the move-out condition inspection report;
- the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy; and,
- the Tenants agreed to pay for two window latches, a closet knob, and drip bowls under four stove elements.

The Landlords provided invoices for:

- two window latches \$10.50*
- closet doorknob \$5.00
- drip bowls under the stovetop elements \$32.42

*The Landlords uploaded two copies of the same invoice for the window latches. I find that this was in error, and the total cost for two latches is \$10.50, and not \$21.00 which is the total for four latches.

February 1, 2023 is the relevant date for the purposes of section 38(1) of the Act. The Landlords had 15 days from February 1, 2023 to repay the security deposit in full to the Tenants. Because the Landlords extinguished their right to claim against the security deposit for damage done to the rental unit, their only option was to repay the full security deposit to the Tenants.

By February 16, 2023, the Landlords had not repaid the full security deposit to the Tenants, therefore, the Landlords must return double the security deposit, **\$750.00**, to the Tenants pursuant to section 38(6) of the Act. Using the RTB Deposit Interest Calculator, there is **\$12.89** of interest owed on the security deposit.

I will now consider the Landlords' compensation claims for damage to the rental unit.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act states that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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 Tenants have agreed to pay the Landlords for two window latches-\$10.50, a closet knob-\$5.00, and drip bowls under four stove elements-\$32.42, for a total of **\$47.92**.

Carpet cleaning:

The Landlords testified that the Tenants did not clean the carpets prior to their vacating the rental unit. The Tenants stated there is no mention they needed to clean the carpets prior to vacating the rental unit.

PG#1 clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities. PG#1 states that tenants must return the rental unit to its original condition before vacating. The landlord may return the rental unit to its original condition and claim costs against the tenant.

Regarding carpets, PG#1 states:

CARPETS

...

3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*
4. *The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.*

I find it was the Tenants' responsibility to clean the carpets prior to vacating the rental unit, this is despite that it does not say it is required at the end of the tenancy. I find the

Landlords have substantiated this part of their claim, and I grant the Landlords **\$130.00** compensation for carpet cleaning.

Replace missing blind strings:

The Landlord said they replaced blind strings in one of the bedrooms and in the family room. The Landlords did not upload a receipt for this repair.

The move-out condition inspection does not note that any blind strings in the rental unit were damaged.

The Tenants submitted that according to their picture evidence, they do not see that the blinds strings need fixing.

Based on the parties' testimonies, and evidence, and on a balance of probabilities, I find that the Landlords have not substantiated their claims for compensation for blind strings. I decline to award compensation for this repair item.

Repair window screen:

The Landlords repaired a window screen. The Landlords pointed to an evidence file of the Tenants, and they said you can see that it is damaged. The total on the receipt for this repair was \$35.00.

The Tenants do not agree with this repair. They stated there was nothing structurally wrong with the screen, and there was no need to replace it.

I find that the picture evidence the Landlords pointed to does not show that the screen is damaged. I note that screen damage is reported on the move-out condition inspection report. I find the Landlords have proven screen damage based on the move-out condition inspection report. I grant the Landlords **\$35.00** compensation for this repair.

Housecleaning and repairs:

The Landlords claim for 30 hours at \$25.00 per hour for housecleaning and repairs. Landlord D.A. said she cleaned, and her husband did repairs to the rental unit.

The Landlords uploaded pictures and videos demonstrating that the rental unit was left dirty. The Landlords' move-out condition inspection does not show that the rental unit was left dirty or that there was damage to doors or baseboards in the suite.

Tenant E.B. testified that they left the rental unit reasonably clean, and she states that her pictures show this.

I find that most of the Landlords' pictures are close up shots of areas in the rental unit that were left dirty. 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. More importantly, I also find that the move-out condition inspection report does not report that the rental unit was left dirty. The move-out condition inspection report does report that a door to bedroom #2 was chipped, and it is reported as damaged.

I find that the rental unit was left reasonably clean except for some reasonable wear and tear. I find that Landlord B.A. spent time repairing a chip on one of the bedroom doors. I grant the Landlords **\$75.00** to repair the chip on this bedroom door, but I do not find that even 15 hours of cleaning was required to prepare the rental unit for its next occupants. I decline the remainder of the housecleaning and repair claim.

Landlords' table:

The Landlords testified that they left a table in the rental unit that the Tenants used from the start of their tenancy. Landlord D.A. said they rolled cigarettes and marijuana on it, and they damaged the table. Landlord D.A. did not produce any evidence that this was the cause of the damage done to the table.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. PG#40 states that the useful life of furniture is 10 years.

This table was purchased two years before the tenancy started, so in 2008. At the end of the tenancy, the table was 15 years old. I find the table was at the end of its useful life, and its compensation amount is now \$0.00. I find the Landlords have not established their claim for \$600.00 to replace this table, and I decline to award compensation for this item.

Are the Landlords entitled to recover the application filing fee?

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** application filing fee paid to start this application under section 72(2)(b) of the Act.

Are the Tenants entitled to a Monetary Order 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 Tenants 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 landlord 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 tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants stated that the Landlords imposed an illegal rent increase on them in December 2021. From January 2022 to the end of the tenancy on January 31, 2023, the Tenants paid the increased rent amount. The Tenants did not pay rent in January 2023 because they received this month free due to the tenancy ending because of the Two Month Notice. In the whole of 2022, the Tenants never made an application to dispute a rent increase, or when the tenancy finally ended, did they make a monetary claim for the return of the overpayment of rent until January 22, 2024.

The Tenants January 22, 2024 application included four claims: 1) monetary compensation for a monetary loss; 2) return of part or all of the security deposit; 3) compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property; and, 4) recovery of the application filing fee. On June 5, 2024, the Tenants' claim for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property was granted, and the Tenants received a monetary Order for 12 months compensation totaling \$13,200.00 (\$1,100.00 X 12), plus \$100.00 for the application filing fee.

In this hearing, the Tenants submitted that the Landlords were only permitted to raise their rent in 2022 by 1.5% as noted in the Regulation. That meant the Landlords were

only permitted to raise the Tenants' rent by \$15.00 (\$1,000.00 X 1.5%). The Landlords told the Tenants that they are to pay \$100.00 more per month starting in January 2022. The Tenants did pay that increased amount. Now the Tenants are seeking repayment of the overpayment of rent per month (\$100.00 - \$15.00 = \$85.00) in the amount of \$1,020.00 (\$85.00 X 12 months).

In *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, 1994 CanLII 100 (SCC), the court set out the test for waiver:

The essentials of waiver are thus full knowledge of the deficiency which might be relied upon and the unequivocal intention to relinquish the right to rely on it. That intention may be expressed in a formal legal document, it may be expressed in some informal fashion or it may be inferred from conduct. In whatever fashion the intention to relinquish the right is communicated, however, the conscious intention to do so is what must be ascertained.

Waiver will be found only where the evidence demonstrates that the party waiving had (1) a full knowledge of rights; and (2) an unequivocal and conscious intention to abandon them. The creation of such a stringent test is justified since no consideration moves from the party in whose favour a waiver operates. An overly broad interpretation of waiver would undermine the requirement of contractual consideration. (Emphasis added)

The Tenants' evidence was that the Landlords imposed an illegal rent increase. I find that the Tenants were aware that they had rights to dispute this rent increase, but at the time, or shortly after the end of the tenancy, they did not.

In January 2024, one year later, the Tenants applied for, and were granted, compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property. The stated amount of rent in that application was \$1,100.00. I find that the Tenants proved they had an unequivocal and conscious intention to abandon their rights to dispute the illegal rent increase especially after applying for the 12 months compensation from the Landlords using the increased rent amount. The Tenants cannot have it both ways.

Based on the parties' submissions, the evidence, and on a balance of probabilities, I dismiss the Tenants' application for monetary compensation for a monetary loss under section 67 of the Act.

The parties' monetary awards are calculated as follows:

Tenants' monetary award:

Item	Amount
Security deposit doubled \$375.00 X 2 =	\$750.00
Deposit interest**	\$12.89
Total monetary award to Tenants:	\$762.89

** There is no interest owed on the deposits in 2010 to 2022 as the amount of interest owed in those years was 0%. The amount of interest in 2023 was 1.95%. The amount of interest in 2024 was 2.7%. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Landlords' monetary award:

Item	Amount
Agreed amounts: two window latches - \$10.50 a closet knob - \$5.00 drip bowls under stove elements - \$32.42	\$47.92
Carpet cleaning	\$130.00
Repair window screen	\$35.00
Landlords' repairs to rental unit	\$75.00
Application filing fee	\$100.00
Total monetary award to Landlords:	\$387.92

A monetary order is granted to the Tenants in the amount of \$374.97 (\$762.89 - \$387.92).

Conclusion

The Landlords monetary claims are partially granted in the amount of \$287.92.

The Landlords are entitled to recovery of the \$100.00 application filing fee.

The Tenants' monetary claim is dismissed without leave to re-apply.

The Tenants are granted double their security deposit, plus interest.

I grant a Monetary Order to the Tenants in the amount of \$374.97. The Landlords must be served with this Order as soon as possible. Should the Landlords 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: August 08, 2024

Residential Tenancy Branch