



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      (T) MNSD, MNETC, FFT  
                                 (L) MNDL, FFL

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit and pet damage deposit under sections 38 and 67 of the Act
- a Monetary Order for compensation under section 51 of the Act for the Landlord failing to accomplish the stated purpose of a Notice to End Tenancy issued under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

This hearing also addressed the Landlord's Application for Dispute Resolution under the Act for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

I find Landlord B.G. and Landlord K.G. were each served on July 4, 2024, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Tenant provided a copy of the outgoing e-mail showing the documents were included as an attachment to confirm this service. A copy of the tenancy agreement signed by the parties which provided for the Landlord's agreement for service by email was provided.

I find the Tenant was served on August 27, 2024, by pre-agreed e-mail in accordance with section 43(2) of the Regulations. The Landlord provided a copy of the outgoing e-mail with attachments to confirm this service.

## **Service of Evidence**

Both the Tenant and the Landlord confirmed receipt of the other party's evidence as well as an opportunity to review it prior to the hearing.

## **Issues to be Decided**

Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

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

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Tenant or the Landlord entitled to recover the filing fee for this application from the other party?

## **Background and Evidence**

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

Evidence established this tenancy began on October 1, 2020, for a fixed term to September 30, 2021, and would thereafter continue on a month-to-month basis. The Tenant's monthly rent in the amount of \$3,000.00 was due on the first day of the month. The Tenant was also obligated to pay 40 percent of the utilities. The Tenant provided the Landlord with a security deposit in the amount of \$1,500.00 as well as a pet damage deposit in the amount of \$750.00. A copy of the tenancy agreement was provided in evidence. The Tenant stated the co-tenant listed on the agreement moved out in 2021.

On May 23, 2023, the Landlord issued a Two Month Notice for Landlord's use of the rental unit. The effective date of the Notice was August 1, 2023. A copy of the Notice was submitted in evidence. The Tenant did not apply for dispute resolution to cancel the Notice on the grounds that it was issued in bad faith.

The Tenant elected to move-out earlier than the effective date. On June 17, 2023, the Tenant gave the Landlord written notice of his intent to vacate the rental unit on June 30, 2023. Additionally, the Tenant provided his forwarding address at that time.

On July 4, 2023, the Landlord returned to the Tenant his pet damage deposit in the amount of \$750.00. On July 15, 2023, the Landlord returned to the Tenant \$1,365.00 from the Tenant's security deposit. The Landlord retained \$135.00 for unpaid utilities. However, the Landlord did not provide the Tenant with copies of the utility statements to establish the amount withheld, nor did she request his authority to retain that amount. The Landlord did not apply for dispute resolution to request authorization to withhold the \$135.00 for unpaid utilities from the security deposit. The Landlord submitted copies of the utility billing statements as well as a calculation of the amount owed by Tenant in support of her retention of these funds. The Tenant did not deny that he owed the amount as calculated, but rather took the position the Landlord did not first seek his consent when withholding the utility payment and provide copies of the billing statements. The Landlord's representative stated that it was common practice each month for her to request payment for the Tenant's share of utilities and did not anticipate the Tenant would have any objection.

The Tenant stated the Two Month Notice was issued in bad faith and in retaliation for an earlier dispute resolution application regarding requested repairs to the unit. He testified that after he moved out of the unit, anytime he went by the unit he noticed the blinds were drawn. The Tenant did not state how often he went by the rental unit. The Tenant also stated he would correspond with a neighbor in the building with whom he shared the washer and drier who informed him on August 11, 2023, that she thought someone was living in the rental unit on a part-time basis.

The Landlord K.G. testified that Landlord B.G. moved into the rental unit on July 3, 2023. Prior to moving into the rental unit, Landlord B.G. had been residing with her daughter and provided care assistance for her grandchildren. Landlord K.G. explained when Landlord B.G.'s daughter had another child, both the daughter and son-in-law went on leave and were home full-time to provide care to their children. Landlord B.G.'s daughter's home was in proximity to Landlord B.G.'s parents' home and she would often go to her parents' home to provide care for her father. When Landlord B.G.'s father passed away, her mother did not require care assistance and the Landlord determined under these circumstances to move into the rental unit.

The Landlord submitted various items of documentary evidence in support of her position that she occupied the rental unit. These included photographs (or still shots from videos taken from inside the unit); receipts from a number of area stores with distance calculated between the store location and the rental unit; utility billing statements addressed to Landlord B.G. at the unit address; credit card billing statements sent to Landlord B.G. at the rental unit address; bank statements from July 2023, December 2023 and January 2024, with the rental unit address; a letter from a government agency to the Landlord with the rental unit address; and, confirmation from

ICBC of Landlord B.G.'s address change to the rental unit for her driver's license dated August 24, 2023 with a copy of her license. The Landlord also submitted two letters from other tenants confirming the Landlord's presence in the unit. The Landlord submitted her own affidavit regarding her occupation in the rental unit after the Tenant moved out.

The Tenant contested the weight that should be given to the Landlord's photographs and store receipts as evidence the Landlord resided in the unit for the relevant period. The Landlord testified the only mail sent to the Landlord at the rental unit address previous to her occupation was from the local municipality, such as notice of development in the community, which was associated with the Landlord as registered owner.

Landlord B.G. moved out of the rental unit on May 7, 2024, and the unit was re-let effective May 11, 2024.

At the time the Tenant moved out of the rental unit, the Landlord alleges in their application for dispute resolution the Tenant had damaged the rental unit during his tenancy. The Landlord stated the Tenant had:

- damaged a windowsill – cost of repair \$80.00 (invoice provided)
- damaged a kitchen countertop by placing hot pots or similar leaving burn marks – 3 estimates provided the Landlord requesting \$8,400.00 for the repair
- damage to a windowpane – estimated cost of repair \$250.00

With regard to the damaged windowsill and windowpane, the Landlord obtained an inspection to determine whether the damage was attributed to normal wear and tear. A copy of the inspection letter dated May 29, 2023, was provided in evidence. The inspector opined that a heavy item was dropped on the windowsill causing it to crack and the windowpane breaking was also not likely a result of wear and tear. It was also noted the crack in the windowpane was close to the break in the windowsill, leading to the conclusion that both occurred in a single event. Landlord K.G. testified he believed the windowsill was original to the unit. The Landlord stated they could not find the move-in/move-out condition reports and for this reason returned the Tenant's damage deposit, less the amount for utilities.

The Landlord further explained (and provided photographs of) the burns to the kitchen laminate countertop. Landlord K.G. stated they requested \$8,400.00 for the repair and replacement of the counter – burned in two locations – because this estimate was the only estimate that noted a cost for removal of the sink to install new countertops. The Landlord testified the countertop had burns in the shape of rings suggesting they were caused by hot pots placed directly on the counter. Upon inquiry, the Landlord stated the kitchen sink was not damaged, but it was necessary to remove the sink to replace the countertops.

The Landlord provided evidence at the time the Tenant vacated the rental unit he admitted to the damage to the kitchen countertop. However, the parties disputed the number and location of the burns to the countertop. The Tenant testified consistently with his text message to the Landlord that he would pay for the damage. However, the Tenant's position was that the value of the repair to the damaged countertop was \$800.00 to \$1,000.00, rather than the \$8,500.00 requested by the Landlord.

The Tenant testified the damage to the windowsill and windowpane was present when he moved into the unit. The Tenant stated he was responsible for only one of the burns on the kitchen countertop. Landlord K.G. testified the Tenant's roommate admitted to him that she caused a burn to the countertop and she provided her landlord, the Tenant, with a \$650.00 damage deposit when she moved in, to cover the cost of such damage. A copy of the roommate agreement was provided in evidence.

## **Analysis**

### **Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?**

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months' duration if the notice to end tenancy was issued on or before April 2, 2024, or 12 months' duration if the notice to end tenancy was issued on or after April 3, 2024.

Based on the evidence before me, the testimony of the parties and submissions, on a balance of probabilities, I find the Tenant has not established a claim for compensation related to a notice to end tenancy on the basis the Landlord did not accomplish the stated purpose or comply with the Act.

The Landlord presented sufficient evidence to establish her occupation of the rental unit for six months. Although the photographs taken from within the rental unit and receipts from area stores have little evidentiary value as the photographs could have been taken without the Landlord occupying the unit as required by the Act, and the Landlord could likewise make purchases from local stores without necessarily occupying the unit, the remaining evidence provided by the Landlord establishes, on a balance of probabilities, Landlord B.G. did occupy the rental unit from July 3, 2023 to May 7, 2024.

Although bad faith is not at issue when determining whether a landlord occupied a rental unit for the prescribed time under section 49 of the Act, the Landlord presented credible testimony as to her reasons for moving into the rental unit. The Landlord submitted documentation from government agencies, her driver's license, financial records and utility statements addressed to her at the rental unit address received over

the course of her occupation of the unit. The driver's license in particular requires an individual provide their residence address as opposed to an address for delivery purposes.

Therefore, I find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, that the Landlord accomplished the stated purpose on the Notice to End Tenancy and the Tenant's application for compensation under section 51 of the Act is dismissed without leave to reapply.

**Is the Tenant entitled to a Monetary Order for the return of their security deposit?**

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

Based on the evidence before me, I find the Landlord was deemed served with the Tenant's forwarding address and the Tenant moved out on June 30, 2023. I further find the Landlord was obligated to obtain the Tenant's written consent to retain the security deposit or to file an application on or before July 15, 2023, 15 days after the tenancy ended. The Tenant did not consent to the withholding of any amount from the security deposit at the time the Tenant moved out.

I find that there is no evidence provided to establish the Landlord had the Tenant's agreement in writing to keep a portion of the security deposit for payment of the utilities and the Landlord did not make an application for dispute resolution to retain this sum.

Under section 38(6) of the Act, I find the Landlord did not comply with section 38(1) of the Act by filing an application for dispute resolution regarding the security deposit for alleged damage to the rental unit and thus the Tenant may obtain double the amount of his security deposit, less the amount the Tenant admitted he owes for utilities and less the amount of the security deposit returned to the Tenant by the Landlord on July 15, 2023. The Tenant's application for return of the security deposit is granted.

This conclusively deals with the Tenant's security deposit.

**Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

Section 35 of the Act establishes 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.

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

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord has established a claim for damage to the rental unit or common areas.

I find the Landlord has presented sufficient evidence to establish the Tenant is responsible for damage to kitchen countertops resulting from burn marks. The useful life of a laminate kitchen countertop is 25 years, as provided in Policy Guideline 40. I find the Tenant is liable for damage to the kitchen countertops in the amount of \$1,200.00.

I find the Landlord has not established that the windowsill and windowpane were damaged by the Tenant during the tenancy. Although the Landlord provided a copy of a home inspection dated May 29, 2023, without a move-in condition inspection report I find the Landlord has not provided sufficient evidence to establish these items of damage were caused by the Tenant.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$1,200.00.

**Is Tenant or the Landlord entitled to recover the filing fee for this application from the Other Party?**

As each party was successful in their respective applications, I decline to award either the Tenant or the Landlord reimbursement of the filing fee from the other party under section 72 of the Act. The Landlord's and Tenant's application for authorization for reimbursement of the filing fee are respectively dismissed, without leave to reapply.

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$300.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the return of double security deposit under sections 38 and 67 of the Act	\$3,000.00
Less utilities owing by the Tenant under the tenancy agreement	-\$135.00
Less amount of security deposit returned by Landlord to Tenant	-\$1,365.00
a Monetary Order to the Landlord for damage to the rental unit by the Tenant under section 67 of the Act	-\$1,200.00
<b>Total Amount</b>	<b>\$300.00</b>

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 20, 2024

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Residential Tenancy Branch