



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## DECISION

### Introduction

The Landlords seek compensation against their former Tenants, pursuant to the *Residential Tenancy Act* (the “Act”).

By way of cross-application, the Tenants seek compensation against their former Landlords, including the return of their security deposit, under the Act.

### Issues

1. Are the Landlords entitled to compensation?
2. Are the Tenants entitled to compensation and the return of their security deposit?

### Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

According to the Landlords, the tenancy began on October 1, 2023, and ended on March 1, 2024. According to the Tenants, the tenancy began on September 30, 2023, and ended on February 28, 2024.

The monthly rent was \$4,100.00 and the Tenants paid a \$2,050.00 security deposit. The security deposit is currently being held in trust by the Landlords pending the outcome of these applications.

The Landlords seek \$12,500.00 in compensation for the following (reproduced from their application):

- 1- Cost of Master bedroom ceiling repair
- 2- Cost of Master bedroom floor repair/change
- 3- Cost of Master bedroom ceiling & wall paint
- 4- Compensation of

missing coffee table of Living set 5- Compensation of missing side table of living set 6- General/Normal cleaning cost of the unit.

In addition, the Landlords seek to recover the cost of the \$100.00 application fee.

A revised monetary order worksheet broke down the amounts into round numbers. For example, there is a claim for \$1,500.00 for a coffee table and a \$300.00 claim for cleanup.

Various photographs of the rental unit were submitted into evidence by the Landlords. There were no receipts, invoices, or other records indicating or reflecting the various amounts claimed. There was no condition inspection report submitted into evidence by the Landlords.

The Tenants seek the return of their \$2,050.00 security deposit, plus the cost of their application fee of \$100.00 for one of their two applications. The Tenants also seek compensation in the amount of \$13,200.00 for (as described in their application):

Landlords' negligence caused property damage, endangering our family. Roof's structural failure led to ceiling collapse during snowstorms, forcing evacuation. 1. Reimbursement of two months' rent (January and February) for the uninhabitable master bedroom, totaling \$8200. 2. Compensation for damages to personal property and electrical equipment resulting from the ceiling collapse, amounting to \$3500. 3. Reimbursement for expenses incurred due to the inability to secure alternative housing \$1500.

The Tenants also seek \$574.74 for a FortisBC bill that was paid after the tenancy ended.

The Tenant testified that they contacted the Landlord via WhatsApp on January 25, 2024, after a storm caused part of the roof (over the master bedroom) to cave in. The master bedroom and part of the kitchen were rendered uninhabitable. After not seeing any repairs done, the Tenants gave the Landlords notice on February 1 that they would be terminating the tenancy effective February 28.

All claims made are related to the Tenants moving out at the end of February. It is noted that part of the claim is related to a purported breach of privacy: On March 6, after the tenancy had ended, the Tenant's wife and children returned to the house to do some

sort of inspection. It was at this time that the property owner or representative of the owner took a picture of the Tenant's wife and children.

The Landlord testified that while the first message received was on January 25, the damage likely occurred at the start of January. Thus, he submits that the Tenants did not mitigate the problem by delaying contacting him. The Landlord testified that he called a friend who is in the roofing business but there was an inability to find anyone to make these repairs.

## **Analysis**

### **1. Landlords' Application**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

There is little, if any evidence, that the Tenants breached the Act that might give rise to compensation being awarded. Any damage and repairs necessary for the ceiling and roof are solely the Landlords' responsibility. Likewise for non-ceiling related claims made, there is insufficient evidence to support a finding that the Tenants breached the Act. There is, I note, the absence of any completed Condition Inspection Report which might shed light on damage caused, if any.

Even if there was a breach of the Act, the tenancy agreement, or the regulations (again, I make no such finding), the Landlords have failed to prove the amount of the loss. The amounts claimed are unsupported by any documentary evidence.

Taking into consideration all the oral testimony and documentary evidence presented

before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have not proven the first and third components of the four-part test on a balance of probabilities.

For this reason, I respectfully dismiss the Landlords' application without leave to reapply.

## 2. Tenants' Application

First, the Tenants' application for the return of their security deposit is granted. Because the Landlords have not proven their claims on a balance of probabilities, they no longer have the legal authority to keep the security deposit. As such, the Landlords are hereby ordered to return the Tenants' security deposit in the amount of \$2,050.00, plus interest in the amount \$47.69 as per the regulations<sup>1</sup>.

The Tenants' claim to recover the cost of their application fee (for their application regarding the security deposit) is granted under section 72(1) of the Act.

Second, regarding the Tenants' claim for compensation, I will repeat the four-part test required in claims for compensation: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In this case, the evidence before me leads me to find that the Tenants contacted the Landlords on January 25 and then gave notice on February 1 that they were ending their tenancy effective February 28. What is more, the evidence persuades me to find that, while the damage occurred in mid- to early-January 2024, the Tenants waited until the end of January to contact the Landlords. Further, the Tenants made no attempt to, of their own volition, hire a roofer to undertake emergency repairs (which are both permitted and reimbursable under section 33 of the Act).

Given these circumstances, I am not satisfied on a balance of probabilities that the Tenants took reasonable steps to minimize their losses resulting from a collapsed roof. For this reason, having not satisfied at least one component in the above-noted four-part test, the Tenants' claims for compensation are, in their entirety, dismissed without leave to reapply.

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<sup>1</sup> Interest is calculated with a deposit date of September 30, 2023, and a return date of September 4, 2024, using the RTB's online interest calculator at <https://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>.

Specifically regarding the claim for an unspecified amount of compensation related to a purported breach of privacy, a tenant is entitled to reasonable privacy (subsection 28(a) of the Act).

However, this right only applies *during* a tenancy, given that sections 26 to 34, inclusive, are contained within *Division 4 – During Tenancy* of the Act. The owner's photographing of the Tenant's wife and family on March 6 occurred *after* the tenancy had ended, and thus no breach of section 28(a) could have occurred. This claim is therefore dismissed without leave to reapply.

## **Conclusion**

The Landlords' application is dismissed without leave to reapply.

The Tenants' application for the return of their security deposit and the cost of one of their application fees is granted. Pursuant to sections 38 and 72 of the Act the Landlords are ordered to pay \$2,197.69.

A monetary order for this amount is issued with this decision to the Tenants and their legal advocate. A copy of the monetary order must be served upon the Landlords, if necessary.

The Tenants' application for compensation is dismissed without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 4, 2024

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Residential Tenancy Branch