



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on September 12, 2024 concerning an application made by the landlord seeking a monetary order as against the tenant for unpaid rent or utilities; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord has provided a Proof of Service document showing that the tenant was served with the Notice of Dispute Resolution Proceeding by registered mail on July 20, 2024, as well as a photograph of a registered mail package bearing a date stamp by Canada Post. I have compared the addressee on the envelope to the forwarding address provided by the tenant to the landlord, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord orally submitted that the landlord's evidence was provided to the tenant with the Notice of Dispute Resolution Proceeding. I accept that submission, and all evidence of the landlord has been reviewed, and the evidence and testimony I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Should the landlord recover the filing fee from the tenant?

Background and Evidence

The landlord testified that the parties entered into a written tenancy agreement dated May 24, 2023 for a 1 year fixed-term tenancy, and a copy has been provided for this hearing. The tenant moved in that day or the day after, and the landlord did not charge rent for the month of May, 2023. The tenancy ended on May 15, 2024. Rent in the amount of \$900.00 was payable on the 1<sup>st</sup> day of each month. The tenant only paid half a month's rent at the end of the tenancy, which the landlord agreed to, and tried to return some money, but the tenant was to pay the landlord some money for damage, but didn't pay.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home. No move-in or move-out condition inspection reports were completed.

The tenant did not leave the rental unit clean, and photographs have been provided for this hearing. The landlord claims \$150.00 and testified that the landlord's friend cleaned it.

The tenant also broke the oven handle, and the landlord claims \$100.00, but has not yet replaced it.

The landlord received the tenant's forwarding address in writing by registered mail, and a copy has been provided for this hearing, dated May 20, 2024.

### Analysis

Firstly, with respect to unpaid rent, the landlord testified that he had agreed that the tenant only had to pay half a month's rent for the last partial month of the tenancy, but has now sued the tenant for that rent because the tenant didn't do a good enough cleaning job or replace the oven handle. A party may not agree and then withdraw the agreement. The landlord did not indicate when the rental unit was re-rented, and in the absence of any evidence or testimony regarding that, I am not satisfied that the landlord has established that the landlord has suffered any loss and I dismiss the landlord's application for a monetary order for unpaid rent.

With respect to damages, in order to be successful, the landlord must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

In this case, I have reviewed the photographs provided by the landlord, and I fail to see how a simple wiping of a fridge, freezer and oven cookie sheet could cost the landlord \$150.00. Further, there is no evidence of the condition of the rental unit at the beginning of the tenancy.

The landlord has not provided any receipts for cleaning or replacement of the oven door handle. The landlord testified that no move-in or move-out condition inspection reports were completed. A tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. Considering the evidence, I am not satisfied that the landlord has satisfied elements 1, 2 or 3 in the test for damages. The law also states that a landlord's right to claim against a security deposit for damages is extinguished if the landlord fails to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations.

The landlord testified that he currently holds \$450.00 of a security deposit in trust, and that the landlord received the tenant's forwarding address in writing by registered mail, which is dated May 20, 2024. The *Act* states that documents received in that manner are deemed to have been received 5 days later, or in this case, May 25, 2024. A landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address

in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. The landlord made this application on July 15, 2024, which is beyond the 15 day limit.

I refer to Residential Tenancy Policy Guideline 17 – Security Deposits and Set Off, which sets out some explanations regarding return or retention of a security deposit through Dispute Resolution. It states, in part:

“1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the RTA, on: a. a landlord’s application to retain all or part of the security deposit; or b. a tenant’s application for the return of the deposit. unless the tenant’s right to the return of the deposit has been extinguished under the RTA. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.”

“3. If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.”

The landlord testified that the security deposit was paid to the landlord at the commencement of the tenancy, which was May 24 or 25, 2023, and I calculate the interest from May 25, 2023 to the date of this hearing at \$13.89. Having found that the landlord has not established any claims, I order that the landlord reimburse the tenant \$913.89, being double the amount of the security deposit and interest, and I grant a monetary order in favour of the tenant as against the landlord in that amount. The landlord must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord’s application is hereby dismissed in its entirety without leave to reapply.

### Conclusion

For the reasons set out above, the landlord’s application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$913.89.

This order is final and binding and may be enforced.

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: September 16, 2024

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Residential Tenancy Branch