



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      TT: CNC-MT, MNDCT, OLC  
                             LL: OPR, MNRL-S, LRSD, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on August 15, 2024 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a One Month Notice to End Tenancy for Cause;
- more time to extend the time limit established by the *Act*, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice;
- an order that the Landlord comply with the *Act*; and
- a monetary order for damage or compensation.

The Landlord’s Application for Dispute Resolution was made on August 28, 2024 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord’s Agent attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord's Agent confirmed receipt of the Tenant's Proceeding Package and evidence. As there were no issues raised relating to service, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Landlord's Agent stated that they served the Tenants with the Landlord's Proceeding Package by Registered Mail on August 28, 2024 and the Landlord's evidence on September 10, 2024. The Landlord provided their proof of service, tracking information and receipts confirming the mailings.

The Tenants stated that they did not receive anything from the Landlord. The Tenants stated that they suddenly stopped receiving any mail on July 2, 2024. The Tenants stated that they did not provide any evidence in support of their inability to receive mail, nor did they provide proof of communicating their concern to the Landlord.

Pursuant to Section 89 and 90 of the Act, I find that the Tenants are deemed served with the Landlord's Proceeding Package five days later on September 2, 2024. I find that the Tenants provided insufficient evidence to demonstrate that they were unable to receive the Proceeding Package.

The Landlord served their evidence to the Tenants by Registered Mail on September 10, 2024. I find that the tracking slips show the evidence was served to the dispute address. I find that the tenancy had ended before September 10, 2024. As such, I find that I cannot consider the Landlord's evidence as it was served to the Tenants after they vacated the rental unit, and they have not had an opportunity to review the Landlord's evidence to respond to it.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the start of the hearing, the parties confirmed that the tenancy has ended. The Landlord's Agent stated that the tenancy ended on September 5, 2024, whereas the Tenants stated they were unsure when they moved out, but they felt as though it was closer to September 1, 2024.

As such, I find the Tenants' claim to for more time and to cancel the One Month Notice, and an order that the Landlord comply with the Act are now moot and therefore dismissed without leave to reapply. Also, the Landlord's claim for an order of possession based on unpaid rent is also dismissed without leave to reapply.

The hearing proceeded based on the parties' monetary claims.

#### Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the Act?
3. Is the Landlord entitled to retaining the Tenants' security deposit, pursuant to Section 38 and 72 of the Act?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 15, 2024. During the tenancy, the Tenants owed rent in the amount of \$2,150.00 to the Landlord on the 15<sup>th</sup> day of each month. The Tenants paid a security deposit in the amount of \$1,075 which the Landlord continues to hold.

#### Tenants Claims

The Tenants are claiming \$1,000.00 for moving costs. The Tenants confirmed that they complied with the One Month Notice for Cause. The Tenants stated that they were terrified of the Landlord as they would engage with them frequently. The Tenants stated that they did not provide evidence in support of the costs associate with moving.

The Tenants are claiming \$1,500.00 as a result of the Landlord doing yard work close to the Tenants' vehicle which caused damage to the vehicle. The Tenants stated that they did not provide evidence of damage or cost of repairs in support of their claim.

The Tenants are claiming \$100.00 to replace their planters which the Landlord broke while moving them from the grass to the patio space. The Tenants stated that they

provided pictures of the cracked planters, but no evidence in support of the cost associated with replacing them.

The Landlord's Agent stated that the Tenants have not provided any evidence to support their claims. The Landlord's Agent stated that the Tenants vacated the rental unit voluntarily.

### Landlord's Claim

The Landlord is claiming that the Tenants failed to pay rent in the amount of \$2,150.00 which was due to be paid on August 15, 2024. The Tenants confirmed that they failed to pay rent when due as they were looking to move from the rental unit, and they felt the Landlord was seeking to end their tenancy after they learned about the Tenant's medical issues.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

### Tenants' Claims

In relation to the monetary compensation sought by the Tenants, Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are claiming \$1,000.00 for moving costs, \$1,500.00 to repair damage to the Tenants' vehicle, and \$100.00 to replace their planter boxes. I find that the Tenants have provided insufficient evidence to demonstrate that they suffered a loss, and the value of that loss. As such, I dismiss the Tenants' claims without leave to reapply.

#### Landlord's Claim

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

The Landlord is claiming \$2,150.00 for unpaid rent that was due to be paid by the Tenants on August 15, 2024. I find that the parties agreed rent in the amount of \$2,150.00 was due to be paid to the Landlord on the 15<sup>th</sup> day of each month. I find that while the Tenants were looking to move as they were unhappy with the Landlord, this does not negate their responsibility to pay rent in full when due to the Landlord. I find that the Tenants breached Section 26 of the Act, and I find that the Landlord has suffered a loss of one month of rent. As such, I find the Landlord is entitled to compensation in the amount of **\$2,150.00**.

As the Landlord was successful with their Application, I find that they are entitled to recover the **\$100.00** filing fee.

I find the Landlord has established a monetary award of \$2,250.00. The Landlord is still holding the Tenants' security deposit in the amount of \$1,075.00. I find the Tenants' security deposit has accrued interest in the amount of \$11.66. I find this brings the value of the Tenants' security deposit to  $(\$1,075.00 + \$11.66 = \$1,086.66)$ .

I find it appropriate in the circumstance that the Landlord retain the Tenants' security deposit plus interest in partial satisfaction of their monetary award  $(\$2,250.00 - \$1,086.66 = \$1,163.34)$ .

I find that the Landlord is entitled to a monetary order in the amount of \$1,163.34.

Conclusion

The Tenant has failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlord is granted a monetary order in the amount of \$1,163.34. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 8, 2024

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Residential Tenancy Branch