



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding 1242372 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

On October 23, 2024 the Landlord submitted an application for:

- compensation for monetary loss/other money owed
- authorization to retain all/part of the security deposit
- recovery of the filing fee for this Application.

On October 28, 2024, the Tenant submitted an application via direct request (*i.e.*, the non-participatory process) to the Residential Tenancy Branch for the return of their security deposit and pet damage deposit after the tenancy ended, and their Application filing fee. Because the Landlord's Application was already in place by that time, the Tenant's Application was joined to that of the Landlord for the same scheduled hearing.

The matter proceeded to the hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 9, 2025. The Landlord and Tenant both attended that scheduled hearing.

### **Service of Notice of Dispute Resolution Proceeding and evidence**

In the hearing, the Tenant confirmed they received the Notice of Dispute Resolution Proceedings served to them by the Landlord, along with the Landlord's prepared evidence.

The Landlord also confirmed they received service from the Tenant of that separate Notice of Dispute Resolution Proceedings, along with the Tenant's prepared evidence.

In sum, I find that both parties completed service of all evidence they provided for this hearing, as required. All evidence, where necessary and relevant, receives my consideration.

## **Issues to be Decided**

- a. Is the Landlord entitled to retain all/part of the security/pet damage deposit?
- b. Is the Landlord entitled to compensation for monetary loss/other money owed?
- c. Is the Tenant entitled to the return of the security/pet damage deposit?
- d. Is the Landlord entitled to recover the filing fee for this Application?
- e. Is the Tenant entitled to recover the filing fee for this Application?

## **Background and Evidence**

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

The Landlord and Tenant each provided a copy of the tenancy agreement. The fixed-term tenancy started on October 7, 2022, to end on the set end date of October 6, 2024.

The monthly rent was \$8,500 per month, payable on the 7<sup>th</sup> day of each month.

The Tenant paid a security deposit of \$4,250 and a pet damage deposit of \$4,250.

In the Landlord's prepared statement of events, they described the fire incident of April 29, 2024 at the property. The Landlord provided that "[the Landlord and Tenant] both agreed that the tenant's security deposit would be returned once the insurance company settled the claim related to the fire damage."

The Landlord in the hearing proposed that the end-of-tenancy date was May 31, being one month after the fire incident. The Tenant could not recall the specific date when they returned a key to the Landlord; however, they identified the date of June 30, being the end-of-month date after they had finished removing their personal property from the rental unit. Even after this date the Tenant was able to re-enter the rental unit by using the combination lock on the front door.

The Landlord noted the Tenant requested the return of the security deposit on September 1, even though the Landlord had not yet obtained the insurer's final report by that time. The Tenant provided a copy of their insurer's report to the Landlord, as

well as confirmation of an email address for the purpose of transfer deposit, on September 9.

The Landlord then visited the property on September 24, to discover that many personal property items of the Tenant were still inside the rental unit. This was despite the Tenant's earlier assertion, in June, that they would remove all items.

The Landlord on September 25 and 27 transferred \$6,000 of the deposit amounts to the Tenant. This was the balance after the Landlord retained a portion, based on a written estimate from a company, for removal of the Tenant's items.

According to the Landlord the Tenant provided an email address for this transfer, equating to the Tenant's acceptance of that amount. On September 9, as shown in the Landlord's provided evidence, the Tenant inquired on the return of the deposit; however, this is not specific to either a full deposit amount or with reference to the Landlord retaining some portion of it. In the hearing, the Tenant confirmed they did not accept this returned amount.

The Tenant presented that items left in the rental unit were those belonging to squatters, who accessed the rental unit through various means after the fire and after the Tenant moved out. The Landlord provided images of the items left behind by the Tenant, as they allege, including furniture items.

The Tenant filed a previous non-participatory resolution matter at the Residential Tenancy Branch in October; however, this was dismissed. After that decision the Landlord brought this Application for a proper dispensation of security deposit amounts; the Tenant then filed this present Application.

In their summary, the Landlord in their written account stated: "The use of the security deposit [*i.e.*, deducting an amount and returning the balance to the Tenant] was justified and necessary to address the outstanding obligations of the tenant, including the removal of [their] belongings."

The Landlord claims \$2,766.75 for personal property/garbage removal. This is based on an estimate they obtained, labeled "garbage removal contract", dated October 22, 2024. To show the items left in the rental unit – which they submit is the personal property of the Tenant – the Landlord provided 20 pictures that they took in September 2024. In the hearing, the Landlord stated that they clean-up on the rental unit was not complete as of the hearing date.

The Tenant, in a written response, and in statements in the hearing, set out the following:

- on July 17 they hired a company to clean out remaining items from the rental unit – the company entered on July 18, and the Tenant later paid \$1,000 for this service
- on September 24 they received pictures from the Landlord showing the state of the rental unit (as in the Landlord's evidence) – the following day the Tenant entered the rental unit via passcode and recorded video, to show that squatters had been present in the rental unit in the interim period after the fire and after the Tenant had removed all their belongings
- what the Landlord's pictures present, more accurately according to the Tenant, is evidence that squatters had occupied the rental unit and left items/garbage
- they provided a formal notice of forwarding address to the Landlord, for the return of their deposits, dated September 12, via registered mail delivered on September 13
- they seek \$8,972.81, being the full \$8,500 combined deposits amount, plus calculated added interest.

## Analysis

### **a. Is the Landlord entitled to retain all/part of the security/pet damage deposit?**

Concerning a landlord's right to claim against the deposits, the *Act* s. 36(2) provides that a landlord's right to claim against deposits is extinguished if they do not provide an opportunity for a move-out inspection, or does not participate, or does not document the inspection and provide a copy to a tenant.

The *Act* s. 44(1)(e) sets out that a tenancy ends when the tenancy agreement is frustrated.

I note fire damage effectively frustrated the tenancy agreement. This means that the tenancy agreement was incapable of being performed. I find this discharges the Landlord from fulfilling the obligation for a final inspection as set out in the tenancy agreement. The frustrated tenancy agreement, particularly due to a fire incident that caused extensive damage, makes the particular requirement for a final inspection

impossible to be performed. Stated thus, I find that the Landlord was not obligated to offer a final inspection, and present it as documented to the Tenant, at the end of this tenancy.

The *Act* s. 38(1) sets out that a landlord must either (a) repay any security or pet damage deposit to a tenant, or (b) make an application for dispute resolution claiming against the deposits. This must occur within 15 days of the later of either the tenancy end date, or the date a landlord receives a tenant's forwarding address in writing. This is the law on security and pet damage deposits when a tenancy ends. This is strictly applied in all cases unless a landlord has a tenant's written consent to keep all/part of the deposits, or some order from the Residential Tenancy Branch.

In a situation where a landlord does not comply with s. 38(1), the *Act* s. 38(6) provides that a landlord may not make a claim against either deposit, and must pay to a tenant double the amount of the deposits.

As above, I find the tenancy agreement was frustrated, thereby relieving the Landlord of their obligation with respect to the 15-day timeline as set out in s. 38. In addition to the tenancy agreement being frustrated, I find adverse circumstances were in place: the matter of insurance that remained unresolved with no final report to the Landlord at least until early September via the Tenant; also, the issue of severe damage in the rental unit making the issue of tenant-caused damage (*i.e.*, beyond possible consideration of reasonable wear and tear) null and void.

I find the agreement frustrated insofar that the parties' obligation regarding a move-out inspection was impossible to fulfill. Similarly, I find the Landlord was not bound by the strict obligation regarding the timing of a claim against the deposits; therefore, I find the Landlord is not bound the *Act* s. 38(6), and there is no doubling of the deposits amounts.

**b. Is the Landlord entitled to compensation for monetary loss/other money owed?**

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of

compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss, the applicant as the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; and
- steps taken, if any, to mitigate the damage or loss.

The *Act* s. 37 provides that, when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find there was no loss to the Landlord that resulted, post-tenancy, from any violation of the *Act* or the tenancy agreement by the Tenant. As above, the agreement was incapable of being performed due to the extreme damage. I find this discharged the Tenant from their obligation to leave the rental unit reasonably clean and undamaged. Had a normal inspection process been the expectation, and the parties capable of undertaking such an inspection, then the obligation would still be in place; however, given the circumstances, the tenancy agreement was frustrated, and the Tenant was relieved on this obligation.

I find that there was no monetary loss to the Landlord that resulted, post-tenancy, from a violation of the *Act* or the tenancy agreement. As above, there was no way to establish damage in the rental unit after the fire incident.

For this reason, I grant no compensation to the Landlord for monetary loss/other money owed. I dismiss the Landlord's Application in its entirety for this reason, without leave to reapply.

**c. Is the Tenant entitled to the return of the security/pet damage deposit?**

In line with my findings above, I dismiss any claim the Landlord made against the deposit, without leave to reapply. I order the Landlord to return both the security deposit and the pet damage to the Tenant. This total amount is \$8,500; I grant a Monetary Order to the Tenant for the deposits' return.

I add the amount of interest on the two deposits to the Tenant, in the amount of \$403.80.<sup>1</sup>

**d. Is the Landlord entitled to recover the filing fee for this Application?**

The Landlord was not successful in this Application; therefore, I grant no recovery of the Application filing fee.

**e. Is the Tenant entitled to recover the filing fee for this Application?**

I find the Tenant was successful in this Application; therefore, I grant recovery of the Application filing fee. This amount is \$100.

## Conclusion

I grant the Tenant a Monetary Order in the amount of **\$9,003.80** under the following terms:

Monetary Issue	Granted Amount
compensation to the Landlord for damage in rental unit	\$0
compensation to the Tenant for deposits return	\$8,903.80
Landlord's recovery of the Application filing fee	\$0
Tenant's recovery of the Application filing fee	\$100.00
<b>Total Amount to Tenant</b>	<b>\$9,003.80</b>

I provide the Tenant with this Monetary Order in the above terms and the Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with

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<sup>1</sup>

2022 \$8500.00: \$0.00 interest owing (0% rate for 31.23% of year)  
 2023 \$8500.00: \$166.44 interest owing (1.95% rate for 100.00% of year)  
 2024 \$8613.98: \$234.37 interest owing (2.7% rate for 100.00% of year)  
 2025 \$8826.58: \$2.99 interest owing (0.95% rate for 3.56% of year)

this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 13, 2025

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Residential Tenancy Branch