



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## DECISION

Dispute Codes      **MNRL-S, MNDL-S, LRSD, FFL; MNSD, MNEVC, FFT**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation from the landlord related to a fixed term tenancy with a requirement to vacate the unit at the end of the term under section 51.1(1) of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The Landlord MG and the corporate Landlord were represented by D.G.

K.C attended with the advocate S.C. on behalf of all Tenants (the Tenant).

Each party acknowledged receipt of the other party's documents. I find each party served the other in compliance with the *Act*.

### Preliminary Issue

The Landlord requested an amendment to remove the name of the corporation from the identification of the Landlord. The parties agreed the tenancy agreement was between M.G. and the Tenant. No evidence was submitted that the corporation was a landlord to the Tenant. The Tenant did not object to the amendment. I find the Tenant could reasonably expect the amendment at the hearing.

I grant the Landlord's request to amend the parties to remove the name of the corporation as a landlord pursuant to section 7.12 of the Rules of Procedure.

Reference to the Landlord hereafter is only to M.G.

### Issue(s) to be Decided

Is the landlord entitled to an award for damages and reimbursement of the filing fee?

Is the tenant entitled to twelve months rent as compensation, doubling of the security deposit and reimbursement of the filing fee?

### Background and Evidence

The hearing was scheduled for one hour and lasted two hours. Considerable disputed testimony was submitted during the hearing. I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

### *Tenancy*

The parties agreed as follows:

1. The parties entered into a fixed term tenancy agreement signed October 23, 2024. A copy of the tenancy agreement was submitted.
2. The unit is a house built in 1958.
3. Rent was \$3,800.00 monthly payable on the first.
4. The Tenant paid a security deposit and a pet deposit each in the amount of \$1,900.00.
5. The Landlord incurred the following expenses for repair of the HVAC (furnace-air conditioner), copies of receipts submitted.
  - a. June 18, 2024 for \$326.96

- b. July 25, 2024 for \$171.16
6. The HVAC repair invoice of June 18, 2024 states:
  - a. Furnace filter was very dirty
  - b. Furnace filter replaced
7. The HVAC repair invoice of July 25, 2024 stated the AC was not working and recommended monthly replacement of filter.
8. The Landlord submitted an undated signed letter from an HVAC technician stated the cause of the excessively dirty filters requiring this service was pet hair and danger from the many pets in the house which caused build up, restricted airflow, and nonfunctioning.
9. The Tenant had four dogs.
10. The Landlord did not submit evidence of the age of the HVAC or details of any service before the tenancy. No condition inspection report took place on move in. No evidence of the condition of the HVAC at the beginning of the tenancy was submitted.
11. The tenancy agreement stated the Tenant would move out October 31, 2023 for the following reasons, copied from the agreement:

**IF YOU CHOOSE C, CHECK AND COMPLETE D OR E**

Check ☐ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

☒ E) At the end of this time, the tenancy is ended and the tenant must vacate the rental unit. This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): 1 YEAR FIXED TERM TENANCY

Residential Tenancy Regulation section number (if applicable):

\* If you choose E, both the landlord and tenant must initial here

Landlord's  
Initials  
  
MB

Tenant's  
Initials  
  
JM KC  
MC

The tenant must move out on or before the last day of the tenancy.

12. The Tenant did not pay rent due on September 1, 2024.
13. The parties signed an agreement on September 8, 2024, a copy of which was submitted stating as follows:
  - a. The Tenant would pay the outstanding rent on September 18, 2024.
  - b. The Tenant would pay the rent due October 1, 2024 on that date.
  - c. If the Tenant were late in paying the rent, the Tenant would pay the Landlord \$500.00.
14. The Tenant moved out by the end of September 2024.
15. The Tenant did not provide one month's notice of moving out.
16. The Landlord did not issue any notice to move out.
17. The parties did not conduct a condition inspection on moving in or moving out.
18. The Tenant provided their forwarding address on October 2, 2024.

19. The Landlord brought this application on October 13, 2024.
20. The Landlord retained the pet deposit, not because of damage to the unit at time of move out, but because of the above HVAC repair expenses attributable to the Tenant's pets.

#### *Landlord's Claim*

The Landlord testified as follows:

1. The parties agreed to a one-year fixed term tenancy which suited both.
2. The Tenant decided to end the tenancy, did not pay rent for September 2024, had no intention of completing the term, moved out voluntarily, and the Landlord is not required to pay the Tenant compensation.
3. The Landlord did not issue a notice to the Tenant to vacate. The Landlord did not issue a 4 Month Notice or any other notice under the Act.
4. The HVAC worked fine before the Tenant moved in, the Tenant is responsible for the pet hair clogging the filter, and the Tenant should pay for repairs.
5. The Tenant voluntarily agreed to pay the \$500.00 late fee in the agreement of September 8, 2024 and should compensate the Landlord.
6. The unit was vacant the month of October 2024 and the Landlord claimed entitlement to compensation because the Tenant did not provide notice they were moving out at the end of September 2024.
7. The corporate Landlord was not a party to the tenancy.

The Landlord claimed compensation for the following:

	ITEM	AMOUNT
1.	September 2024 – outstanding rent	\$3,800.00
2.	October 2024 - rent	\$3,800.00
3.	HVAC servicing June 2024	\$326.96
4.	HVAC servicing July 2024	\$171.16
5.	Late fee	\$500.00
	<b>TOTAL</b>	<b>\$8,598.12</b>

#### *Tenant's Claim*

The Tenant testified as follows:

1. The Landlord did not do a condition inspection on moving in or out and the deposits should be doubled.
2. The HVAC was not inspected when they moved in, did not work well or at all, and they are not responsible for the malfunctioning and resulting repair bills.
3. The Landlord knew the Tenant had four dogs and did not object to their pets.
4. The pets did not cause the HVAC to malfunction.
5. The tenancy agreement is a fixed term agreement requiring the Tenant to move out which is in violation of the Act.
6. The Landlord expected the Tenant to move out, demanded they move out when the September 2024 rent was late (akin to a Notice to End Tenancy though a Notice was not issued), and caused the Tenant to move out contrary to the Act. This is a breach of the Act and the Tenant is entitled to compensation of twelve months rent as compensation.
7. The Tenant is entitled to a doubling of the deposits.
8. The Tenant's claim is summarized:

	ITEM	AMOUNT
1.	Twelve months rent	\$45,600.00
2.	Security deposit – doubling	\$3,800.00
3.	Pet deposit – doubling	\$3,800.00
	<b>TOTAL</b>	<b>\$53,200.00</b>

### Analysis

#### ***Standard of Proof***

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant proven the amount or value of their damage or loss?

4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act.or loss.

Each of the above four tests are considered in my findings.

The claims are addressed in the following order:

1. Landlord's claim for rent for September 2024 and October 2024.
2. Landlord's claim for reimbursement for HVAC repairs.
3. Landlord's claim for \$500.00 late fee.
4. Tenant's claim for twelve months rent.
5. Tenant's claim for doubling of security deposit
6. Tenant's claim for doubling of pet deposit.
7. Summary, off setting.

1. *Landlord's claim for rent for September 2024 and October 2024.*

The parties agreed the Tenant did not pay rent for September 2024, did not provide one month's notice of moving out, vacated end of September 2024, and did not pay rent for October 2024.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has met the burden of proof for the claim for unpaid rent owing for September 2024 in the amount of \$3,800.00.

Section 45(1) provides that a Tenant may end a fixed term tenancy by giving the Landlord notice one month before the end of the fixed term as set out in the section. The Tenant did not provide the Landlord notice.

I accept the Landlord was unable to advertise the unit for October 1, 2024 without notice from the Tenant and is therefore entitled to compensation in the amount of one month's rent, \$3,800.00.

Pursuant to section 67, I find the Landlord is entitled to a Monetary Order for unpaid rent for September and October 2024 under section 67 of the Act, in the amount of \$7,600.00 for this aspect of the Landlord's claim.

2. *Landlord's claim for reimbursement for HVAC repairs*

Under the Act, the landlord is responsible for regular repairs and maintenance. The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. The tenant is not responsible for reasonable wear and tear. These obligations are discussed in RTB *Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* and sections 32 and 35 of the Act.

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.

The landlord has the burden of proving their claim. They have failed to do so in this case. The Landlord submitted no evidence of the age of the HVAC, the maintenance history, or whether it was in good condition when the Tenant moved in. No condition inspection was conducted on moving in.

I do not accept as a reasonable interpretation of events that the landlord provided a like-new, undamaged, or well-maintained HVAC at the beginning of the tenancy or that the tenant damaged it by having pets.

Therefore, the landlord has not met the burden of proof of the first part of the four-part test, that the tenant failed to comply with the Act .

In consideration of the Act, the Policy Guideline and the evidence, I find the Landlord has not proven this aspect of their claim and is not entitled to compensation for damages under this heading which is dismissed without leave to reapply.

3. *Landlord's claim for \$500.00 late fee*

Section 7 of the Act sets out the non-refundable fees that may be charged by a landlord which includes an administration fee of not more than \$25.00 for the late payment of rent which must be provided in the tenancy agreement.

As the September 8, 2024 requirement that the Tenant pay a late fee of \$500.00 does not comply with the Act, I find the Landlord is not entitled to compensation under this heading.

In consideration of the Act, the Policy Guideline and the evidence, I find the Landlord has not proven this aspect of their claim and is not entitled to compensation for damages under this heading which is dismissed without leave to reapply.

4. *Tenant's claim for twelve months rent*

The parties agreed the Landlord did not issue a notice under section 49 which is required for the compensation provisions to apply.

As the Landlord did not issue a notice, the Tenant is not entitled to the compensation claimed of twelve months' rent.

In consideration of the Act and the evidence, I find the Tenant has not proven this aspect of their claim and is not entitled to compensation for damages under this heading which is dismissed without leave to reapply.

5. *Tenant's claim for doubling of security deposit*

The Landlord is entitled to claim against the security deposit for outstanding rent. As stated in section 38 of the Act and *RTB Policy Guideline 17. Security Deposits and Set Off*, a Landlord who has lost the right to claim against the security deposit for damage to the unit, retains the right to file a claim for money owing for other than damage.

The Landlord brought the application to retain the security deposit within 15 days of the end of the tenancy and the receipt of the forwarding address.

The Tenant is not entitled to a doubling of the security deposit. I find the Tenant has not proven this aspect of their claim and I dismiss their claim under this heading without leave to reapply.

The Landlord may apply the security deposit to the award for outstanding rent under section 72.

6. *Tenant's claim for doubling of pet deposit*

*RTB Policy Guideline 31. Pet Damage Deposits* states the landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet.

Section 38 of the Act requires the landlord to either return the deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.



If that does not occur, the landlord is required to pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

I find the Tenant is entitled to a doubling of the pet deposit because the Landlord's right to claim against it was extinguished as they did not carry out the required condition inspection on moving out. The Landlord retained the pet deposit to pay for repairs to the HVAC which I have found were not caused by the pets.

I find the Landlord was required to return the pet deposit, in full, within 15 days of receiving the Tenant's forwarding address in writing, or the end of the tenancy, whichever is later, thereby breaching s. 38(1) of the Act.

I find that the tenant is entitled to receive double the value of their pet deposit of \$1,900.00 totalling \$3,800.00 and interest. I grant the Tenant an award in this amount.

#### 7. *Summary, off setting*

I award the Landlord the following:

ITEM	AMOUNT
Rent September 2024	\$3,800.00
Rent October 2024	\$3,800.00
<b>TOTAL</b>	<b>\$7,600.00</b>

I award the Tenant the following:

ITEM	AMOUNT
Security deposit	\$1,900.00
Pet deposit – doubling	\$3,800.00
Interest (agreed)	\$111.44
<b>TOTAL</b>	<b>\$5,811.44</b>

Offsetting pursuant to section 72:

ITEM	AMOUNT
Awarded to Landlord	\$7,600.00
(Awarded to Tenant)	(\$5,811.44)
<b>TOTAL – AWARD TO LANDLORD</b>	<b>\$1,788.56</b>

In the circumstances, I do not award either party reimbursement of the filing fee.

I grant the Landlord a Monetary Order of **\$1,788.56** against the Tenant.

Conclusion

I grant the Landlord a Monetary Order of \$1,788.56 against the Tenant.

This Monetary Order may be filed and enforced in the courts of the province of BC.

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: January 3, 2025

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Residential Tenancy Branch