# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

# DECISION

## Introduction

This hearing was convened under the *Residential Tenancy Act* (The ***Act***) in response to cross applications from the parties.

The Tenants filed their application on December 20, 2024. The Tenant seek:

- A Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the *Act*.
- Authorization to recover the filing fee for this application from the Landlords under section 72 of the *Act*.

The Landlords filed their application on February 4, 2025. The Landlords seek:

- A Monetary Order for unpaid rent under section 67 of the *Act*.
- A Monetary Order for damage to the rental unit or common areas under sections 32 and 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 under section 38 of the *Act*.
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the *Act*.

Tenants NG and BF both attended the hearing. VC attended the hearing for the Landlords.

## Service of Records

- *Tenants' Application*

VC acknowledged receipt of the Tenants' application and documentary evidence, sent to them by Purolator Express. Pursuant to section 71(2)(c) of the *Act*, and VC's acknowledgement of receipt, I find the Tenants sufficiently served their application and documentary evidence to VC by courier.

The Tenants submitted two Purolator Express customer receipts for two separate shipments, to each landlord, bearing the associated tracking numbers (copied on the cover page of my decision), as well as the destination addresses and the recipients' names. In the submitted customer receipts, I can see that the signature option was

selected. Landlord DB did not attend the hearing. At the start of the hearing, VC stated that landlord DB is their spouse, and that DB cannot attend the hearing due to another obligation, notwithstanding their awareness of the claims made against them. Pursuant to SMG's order, dated December 17, 2024 (respecting service by courier during the Canada Post labour disruption), I find landlord DB is deemed served with the Tenants' application and documentary evidence, on January 8, 2025, the fifth day after the Tenants mailed their package to DB.

In response to the Tenants' application, the Landlords submitted two videos for consideration. VC testified that the two videos were never served to the Tenants, because at least one of the videos may have been originally sent to the Landlords by the Tenants. The Tenants could not verify this claim based on my description of the videos. Consequently, I find the Landlords failed to establish that they served their two videos to the Tenants in accordance with the Branch's *Rules of Procedure* (Rule 3.16). I find the two videos are not new evidence (Rule 3.17) and they could have been served to the Tenants at least two months prior to the hearing date. In making my decision, I have not relied on the Landlords' two unserved video records.

- *Landlords' Application*

The Landlords submitted two Canada Post customer receipts bearing tracking numbers and the destination postal codes. Tenant NG acknowledged receipt of the Landlords' registered package containing the Landlords' application and evidence, pursuant to which I find the Landlords served their application and evidence to NG in accordance with sections 88 and 89 of the *Act*.

NG testified that tenant BF did not reside with them, which is why BF was unable to take delivery of the Landlords' registered package, but they forwarded the Landlords' records to BF and both tenants reviewed the Landlords' records. BF attended the hearing, and they did not oppose their co-tenant's testimony. Pursuant to section 71(2)(c) of the *Act* and the foregoing evidence provided by NG, I find the Landlords sufficiently served BF with their application and documentary evidence (except for two videos, which I discussed above), for the purposes of the *Act*.

The hearing went ahead as scheduled. Neither party requested an adjournment.

## Background Facts and Evidence

I have reviewed all evidence, including the parties' testimonies, <u>but I will refer only to what I find relevant to my decision</u>.

The parties agreed that:

- This tenancy began on June 23, 2023, and it ended on June 30, 2024 (the date the Tenants vacated the unit).
- On June 23, 2023, the parties completed a start of tenancy condition inspection report of the Rental Unit (the term "Rental Unit" is defined on the cover page of this decision), together.
- The monthly rent was $3,500.00, due on the first day of every month.
- On June 8, 2023, the Tenants paid a $1,750.00 security deposit and a $1,750.00 pet deposit to the Landlords.
- The Landlords returned $790.32 to the Tenants on either January 20, 2025 (the date VC testified the funds were pulled from the Landlords' account) or on January 23, 2025 (the date the Tenants testified the funds were deposited into their account).
- On June 30, 2024, the Tenants provided their forwarding address to the Landlords, by email.
- The parties did not complete an end-of-tenancy condition inspection of the Rental Unit, because they could not mutually agree on a date.

In their application, the Tenants are seeking the return of their security and pet deposits, as well as their $100.00 filing fee.

In their Monetary Order Worksheet, the Landlords outlined the following claims:

| No. | Receipt/Estimate From | For | Amount |
|---|---|---|---|
| 1 | Landlord | Loss of revenue from "6/30/2024-7/24/2024" | $2,709.68 |
| 2 | UTSP | "Plumber" | $156.45 |
| 3 | DM | "Fix Water Damage" | $1,074.15 |
| 4 | IH | "Fix Water Damage" | $994.88 |
| 5 | DTP | "Plumber" | $200.00 |

In addition to the above items, the Landlords are seeking their $100.00 filing fee.

I will provide details of the parties' evidence regarding the above items, under the "Analysis" section below.

## Analysis

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

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

**Were the Landlords authorized to retain the Tenants' deposits and make a claim against them? If not, are the Tenants entitled to a Monetary Order for the return of their deposit?**

The parties agreed that a condition inspection report was completed at the start of the tenancy, with both parties present. I do not find either party to have extinguished their rights respecting the Tenants' deposits at the start of the tenancy.

In this case it is not necessary to determine whether the Landlords extinguished their rights in relation to the deposits at the end of the tenancy, because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords have claimed for loss of rental revenue, and sought the Tenants' consent to retain a portion of their deposits, for those losses, which is not damage.

Section 38 of the *Act* sets out specific timing requirements for dealing with deposits at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to return the Tenants' deposits, file a claim against the deposits, or reach an agreement with the Tenants to keep some or all the deposits.

In this case, the tenancy ended on June 30, 2024, and the parties agreed that the Landlords received the Tenants' forwarding address, by email, on the same date. It is unclear whether the parties had an agreement in place, on June 30, 2024, to serve records by email. VC acknowledged receipt of the Tenants' forwarding address, pursuant to which, and section 71(2)(c) of the *Act*, I find the Tenants sufficiently served their forwarding address for the purposes of the *Act*, in writing, to the Landlords, on June 30, 2024.

Even if I were to find this tenancy ended on July 24, 2024, which is the end date indicated in the Landlords' application, the Landlords did not file their application until February 4, 2025. They are therefore in contravention of the timing provisions of section 38 of the *Act* with respect to at least a portion of the Tenants' $3,500.00 security and pet deposits.

During the hearing, I reviewed the parties' email correspondence records. On June 23, 2024, the Landlords emailed the Tenants and stated that "you will be required to pay rent for the 24 days from July 1 to July 24, 2024" and "[p]lease ensure that the total amount of $2688 is paid by July 1, 2024 via the usual means". On June 30, 2024, the Tenants emailed the Landlords and stated, "[p]lease take the rent owed from our security and pet deposit. The keys for the mailbox and garage entry door are hanging on the hook at the front."

At the hearing, NG initially testified that they never agreed that the Landlords could deduct funds from their deposits. VC opposed NG's testimony and testified that the Tenants agreed to have the claimed rent deducted from their deposits. After reviewing

the above correspondence with the parties at the hearing, tenant NG testified that they were “okay” with the Landlords taking rent from their deposits, but they wished to see “proof” first. NG testified that they did not indicate their “wish” to the Landlords “in those words”.

Based on my review of the parties’ correspondence, I find the Tenants agreed, in writing, that the Landlords may retain $2,688.00 from the Tenants’ deposits for unpaid rent and/or loss of rental revenue. I find the agreement was unequivocal and without conditions.

However, the above agreement was only with respect to a portion of the Tenants’ $3,500.00 aggregate deposit. The Landlords were obligated to return the balance of the Tenants’ deposits or file a claim against them with the Branch within the timing provisions outlined above. Due to the Landlords’ failure to take either of the foregoing actions, the Landlords contravened section 38(1) of the *Act*. Section 38(6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As stated under Policy Guideline 17, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

a) any arbitrator’s monetary order outstanding at the end of the tenancy;
b) any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
c) [redacted for relevance].

In this case, there is no evidence before me that a monetary order from the Director was outstanding at the end of this tenancy. Therefore, the following calculations are applicable in this case:

- $3,500.00 (aggregate amount of security and pet deposit), less $2,688.00 (amount the Tenants agreed, in writing, that the Landlords may retain) = $812.00.
- $812.00, doubled = $1,624.00.
- $1,624.00, less $790.32 (amount returned to the Tenants in January 2025), by the Landlords = $833.68.
- Interest calculated on $3,500.00, from June 8, 2023 (date of the deposits’ payment to the Landlords by the Tenants), to June 30, 2024 (the date the Tenants agreed that the Landlords may retain $2,688.00) = $85.83.
- Interest calculated on $812.00, from June 30, 2024, to January 23, 2025 (the date the Tenants received $790.32 from the Landlords) = $11.57.

- Interest calculated on $21.68 (the difference between $812.00 and $790.32), from January 23, 2025, to April 2, 2025 (the date of this decision) = $0.04.

I award the Tenants $931.12, which reflects the sum of the above underlined items. I will now turn my mind to the Landlords' claims. Any amounts awarded to the Landlords will be set off against my $931.12 award to the Tenants.

**Have the Landlords established a claim for unpaid rent and damages to the Rental Unit?**

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

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.

Section 37 of the *Act* states that when a tenant vacates a Rental Unit, the tenant must leave the Rental Unit reasonably clean, and undamaged, except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the Act. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. The Residential Tenancy Branch Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the Act or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

- *Claim 1: loss of rental revenue from "6/30/2024-7/24/2024"*

VC testified that the $2,688.00 amount the Tenants agreed with was for the same period as above, but after recalculating, they realized that the actual amount of their loss was $2,709.68, not $2,688.00.

There is no dispute in this case that the Tenants signed a two-year fixed term tenancy agreement (a copy was submitted by the parties) with the Landlords, beginning on June 23, 2023, and ending on June 23, 2025.

In contravention of section 45(2)(b) of the *Act* and the parties' tenancy agreement, the Tenants ended their tenancy before the end date specified in the parties' tenancy agreement.

I have reviewed the parties' email correspondence in detail. The first time the Tenants provided the Landlords with a concrete move out date from the Rental Unit was on June 12, 2024, on which date they informed the Landlords that they will be vacating the Rental Unit by June 28, 2024.

VC testified that the Landlords began to mitigate their loss immediately and found new tenants by June 18, 2024, but the new tenants did not start their tenancy until July 25, 2024. The Landlords submitted the associated tenancy agreement between themselves and third parties, showing that on June 18, 2024, new tenants agreed to rent the Rental Unit starting on June 25, 2024, at a monthly rate of $3,500.00 (the same rent that was being paid by the Tenants).

I find the Landlords mitigated their losses in this case.

The Landlords claimed 24 days of rental revenue loss at a daily rate of $112.90 ($3,500.00/31 days). I have already found the Tenants agreed, in writing, that the Landlords may retain $2,688.00 towards loss of rental revenue. At the hearing, the Tenants testified that they do not dispute the Landlords' current calculations.

I find the Landlords established a loss in the amount of $2,709.68. The Tenants previously agreed with $2,688.00 of this loss. Pursuant to section 67 of the *Act*, I award the Landlords the $21.68 remainder.

- *Claims 2, 3, 4 and 5 – plumbing invoice(s) and water damage*

VC testified that on July 14, 2023 (the **First Incident**), and on May 14, 2024 (the **Second Incident**) the Tenants caused water to leak onto the Rental Unit's bathroom floor, which seeped into the bedroom below and damaged the bedroom's ceiling.

With respect to the First Incident, VC testified that the plumber who attended the Rental Unit on or about July 14, 2023, informed them that a bathtub or shower nozzle was pointed to the Rental Unit's bathroom floor, which caused the water damage. The Landlords are seeking the cost of this plumber's services, in the amount of $200.00. VC agreed that the Landlords did not submit an invoice in the amount of $200.00 associated with the plumber's visit in July 2023. It is unclear to me what the $200.00 claim is based on. Claim 5, in the amount of $200.00, is dismissed, without leave to reapply, because the Landlords failed to substantiate a loss in the foregoing amount.

In response to VC's testimony respecting the First Incident, NG testified that:

- The bathroom's caulking needed to be replenished, which allowed water to seep into walls.
- The Tenants never misused the shower/bathtub's faucet(s) and water seepage was not due to misuse or negligence.
- At least a portion of the DM invoice submitted by the Landlords, dated August 22, 2023, in the amount of $1,074.15, was for the installation of a new ceiling speaker in the bedroom impacted by the water leak, which has nothing to do with the Tenants.

VC agreed that a portion of the $1,074.15 invoice was for the installation of a new ceiling speaker.

The parties agreed that during or after the First Incident, the Landlords never blamed the Tenants for the First Incident, until they filed the current application.

I dismiss claim 3, in the amount of $1,074.15, without leave to reapply, for two reasons. First, the Landlords failed to establish a contravention of the *Act*, tenancy agreement, or the *Regulations* respecting the First Incident. The leak is not *prima facie* proof that the Tenants contravened the *Act*. The associated invoice provides no information regarding the cause of the incident and the plumber did not attend the hearing to provide testimony. VC did not refer me to any statements from a plumber in attendance at the Rental Unit regarding the First Incident. I find it telling in this case that at the time of the incident, the Landlords never assigned blame to the Tenants. However, even if I am wrong in the foregoing analysis, I would reject the claim because the associated invoice is partly for renovation work (speaker installation costs) that had nothing to do with the First Incident. There is no evidence before me which would allow me to separate the cost of the speaker's installation costs from the amount of the invoice, because the invoice does not provide a line-item breakdown.

With respect to the Second Incident, VC testified that in 2024, the Tenants notified them of a second leak and their plumber indicated that the Tenants caused water to flow onto the Rental Unit's tiled bathroom floor. The Landlords are seeking the cost of the plumber's initial visit in the amount of $156.45 and repair costs, in the amount of $994.88.

In response the Tenants testified that:

- The water leak was due to a "design flaw".
- The faucet in this case was floor mounted and it hung "over the tub".
- The faucet malfunctioned, and as a result water slowly dropped along the length of its hose and pipe onto the Rental Unit's bathroom floor.
- The Landlords replaced the faucet entirely, which suggests that there was something wrong with the previous faucet.

VC testified that the Tenants must have left the water running on the day of the Second Incident.

The parties agreed that at the time of the above incident, the Landlords did not assign blame to the Tenants.

I have reviewed the two invoices associated with the Second Incident. In the $156.45 invoice, dated May 14, 2024, I can see the following statements from the plumber:

- “1) Tested the freestanding tub drainage first. No leak from the drain”
- “2) The leak was being caused from the tub filler. The water trickles down the tub filler and through the floor. Poor design flaw.”
- “The best course of action for this scenario would be to replace the tub filler with a new and better design”
- “We suggest getting a product from [redacted for privacy]”

Based on the above, I find it more likely than not that the cause of the Second Incident was a defect with the facility provided to the Tenants. I cannot find a contravention of the *Act*, the tenancy agreement and the *Regulations*, on the evidence before me. The Landlords’ claims related to the Second Incident are dismissed, without leave to reapply.

Both parties are seeking the cost of their filing fees. Both parties were partially successful in their applications. Pursuant to section 72 of the *Act*, I award both parties their $100.00 filing fees.

The following is a summary of my awards to both parties:

To the Tenants: $931.12 (deposits and interest payable to the Tenants) + $100.00 filing fee = $1,031.12.

To the Landlords: $21.68 (the Tenants’ agreement that the Landlords may retain $2,688.00 for loss of rental revenue is reflected in the above award to the Tenants) + $100.00 filing fee = $121.68.

After setting off the above awards, I grant the Tenants a Monetary Order in the amount of $909.44.

## Conclusion

I grant the Tenants a Monetary Order in the amount of **$909.44** under the following terms:

| Monetary Issue | Granted Amount |
|---|---|
| Security and pet deposits, doubled, plus interest, less any amounts previously returned to the Tenants and any amounts the Tenants agreed, in writing, the Landlords may retain, at the end of the tenancy, pursuant to section 38 of the *Act*. | $931.12 |
| Plus: filing fee to the Tenants, pursuant to section 72 of the *Act*. | $100.00 |
| Less: loss of rental revenue, to the Landlords, pursuant to section 67 of the *Act*. | -$21.68 |
| Less: filing fee to the Landlords, pursuant to section 72 of the *Act*. | -$100.00 |
| **Total Amount** | **$909.44** |

The Tenants are provided with the attached Monetary Order in the above terms and the Landlords must be served with the **Order** as soon as possible. Should the Landlords fail to comply with the Order, the Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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: April 2, 2025

Residential Tenancy Branch