



## **DECISION**

### **Introduction**

This hearing was adjourned to written submissions following a hearing on March 28, 2025 regarding the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Tenants applied for:

- compensation for monetary loss under section 67 of the Act;
- return of the security deposit under section 38 of the Act; and
- authorization to recover the Tenants' filing fee under section 72 of the Act.

The Landlord applied for:

- compensation for unpaid utilities under section 67 of the Act;
- compensation for damage to the rental unit under sections 32 and 67 of the Act;
- compensation for monetary loss under section 67 of the Act;
- authorization to retain the security deposit under section 38 of the Act; and
- authorization to recover the Landlord's filing fee under section 72 of the Act.

On March 26, 2025, I issued an interim decision in this matter. This decision should be read together with the interim decision.

### **Preliminary Matters**

#### **Service of Written Submissions**

The parties submitted their written statement and proof that they emailed their statement to the other party as instructed in the interim decision. I find the parties to be sufficiently served with each other's written statements. In making this decision, I have considered all of the evidence submitted by the parties.

#### **Clarification of the Tenants' Claims**

I find the Tenants did not include claims for compensation related to painting costs (\$800.00) and unlawful rent increases (totaling \$999.00) in their application. I find the Tenants also did not make an amendment application to add these claims. However, I find these claims were reasonably anticipated by the Landlord, who has provided evidence and submissions in response. As such, I have amended the Tenants'

application to include these claims under Rule 7.12 of the Rules of Procedure, and I have addressed them in this decision.

### **Issues to be Decided**

Are the Tenants entitled to compensation for monetary loss?

Is the Landlord entitled to compensation for unpaid utilities, damage to the rental unit, or monetary loss?

Is the Landlord entitled to retain the security deposit?

Are the parties entitled to recover their filing fees?

### **Background and Evidence**

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

The rental unit is a three-bedroom house. This tenancy commenced on July 1, 2019. The rent was initially \$1,900.00 due on the first day of each month. The Tenants paid a security deposit of \$950.00.

The Tenants moved out of the rental unit by October 1, 2024.

On November 7, 2024, the Tenants sent their forwarding address to the Landlord via registered mail, which was delivered on November 13, 2024.

In the Tenants' application, the Tenants seek compensation for:

<b>Item</b>	<b>Amount</b>
Loss of Employment Income (\$70.00 × 6 hours)	\$420.00
House Painting	\$800.00
Rent Increases \$480.00 (November 2023 to June 2024) \$219.00 (May to July 2024) \$300.00 (August to September 2024)	\$999.00
Tenants' Filing Fee	\$100.00
<b>Total</b>	<b>\$2,319.00</b>

The Landlord made her application on February 27, 2025. The Landlord seeks compensation for:

Item	Amount
Utility Bill	\$195.82
Drywall Repair	\$250.00
Bug Screen	\$315.00
Yard Maintenance	\$147.00
Cleaning and Garbage Disposal	\$174.00
Cleaning Help	\$144.00
Paint Stain Cleaner	\$18.13
Landlord's Filing Fee	\$100.00
<b>Total</b>	<b>\$1,343.95</b>

### *The Tenants' Position*

The Landlord never showed up for the inspection and key handover on October 1, 2024. Tenant YK waited and had to take time off work. The Landlord called back and said her car broke down. The parties agreed for the Tenants to leave the keys with the neighbours.

The Tenants had changed the colour of the kids' room with the Landlord's permission. The Tenants removed decals and painted the house back to the original colour. The Tenants were not supposed to paint the entire house but were made to do the whole house. The cost of painting was \$800.00.

The Landlord illegally increased the rent by \$100.00 in October 2021. Thereafter, the Landlord would do authorized rent increases and also ask the Tenants every few months to increase the rent more. The Tenants were pressured into paying those increases. The Tenants did not want to move out because they were within walking distance to their children's school.

### *The Landlord's Position*

The Landlord was supposed to receive the keys from the Tenants on September 30, 2024, but the Tenants needed more time to move out. The next day, the Landlord was having issues with her car. The Landlord told the Tenants to finish the work inside the house and to leave the keys. The Landlord never told the Tenants to wait.

The Landlord gave permission for the Tenants to change the colour of a room that their child would be using, on the condition that it would be changed back afterwards. The Landlord asked the Tenants to paint because they had promised to match the colour back, and because the Tenants' kids had drawn, doodled, painted, and added stickers

on the walls in many places around the house. The Landlord only asked the Tenants to paint over their kids' drawings. The paint job was not done very well.

The parties had a verbal contract that the rent would be lowered to \$1,900.00 from the listed amount of \$2,000.00, and in exchange, the rent would increase by \$100.00 in 2020 and then by another \$100.00 in 2021. Rent increases were subsequently frozen due to the pandemic. The Tenants paid the agreed upon increase of \$100.00 starting in October 2021. The Landlord gave the Tenants a \$40.00 rent increase (2% of \$2,000.00) effective May 2023. The Landlord asked the Tenants to pay more because three extra adults, Tenant SQ's parents and brother, had been living in the rental unit for extended periods since the end of 2019. The Landlord was informed that they were short-term visitors. However, they were still living with the Tenants in early 2023. There were 5 adults and 2 children living in the home. Tenants promised to pay an appropriate amount of rent. The Tenants starting paying \$60.00 in November 2023, which was not enough to cover three extra people. The Landlord gave the Tenants a \$73.50 rent increase (3.5% of \$2,100.00) effective May 2024. The Tenants finally adjusted the rent appropriately by \$76.50 (to \$2,250.00) in August 2024, which the Tenants paid for the last two months of the tenancy.

The Tenants added wall-mounted shelves and a curtain rod in the master bedroom that resulted in drywall damage. The Landlord is not claiming compensation for repairs to drywall in other areas of the house.

The Tenants left a large tear in the front bug screen, which was in good condition as shown in a photo taken in April 2021. The rear bug screen was also damaged, and the Tenants left it outside in the backyard. The Landlord obtained a quote for the repairs.

The Tenants were responsible for regular maintenance of the front and backyards. The front and backyards were left overgrown and unmaintained when the Tenants moved out. The Landlord had to pay for lawn care services.

The rental unit required further cleaning after the Tenants left. There was drywall dust on the floor, as well as belongings and garbage, which was mostly in the backyard. The Landlord cleaned the unit herself and hired a helper. The Landlord purchased a special cleaner to remove paint splatters on the floor.

The Landlord moved the Tenants' belongings to the front corner of the property for the Tenants to pick up. The Tenants said they booked a garbage pickup with the city, but did not tell the Landlord the pickup date. The Landlord's neighbour and new tenants complained about the garbage. On October 15, 2024, the Landlord called the city and was told that the pickup date was supposed to be October 30, 2024. The city then cancelled the pickup upon learning that it was scheduled by the Tenants, who no longer lived in the unit. The Landlord tried to re-book but was told it would be November, which was too long. The Landlord informed the Tenants on October 18, 2024 about garbage removal. The Landlord ended up having to dispose of a few large items herself.

The Tenants were responsible to pay for a utility bill that was in the Landlord's name. The Tenants did not pay even after receiving a written demand from the Landlord.

The Landlord was late with making her application because she was abroad, then fell ill when she returned to Canada. The Landlord's pet then had a medical condition requiring surgery in December 2024. The Landlord's son PA was also recently in and out of the hospital. These events prevented the Landlord from responding in a timely manner.

### *The Tenants' Reply*

SQ's parents were visiting from September 2019 and went back to their home country when the covid-19 restrictions were lifted. The Landlord was informed at the time of renting that SQ's parents would be visiting, since the Tenants were having a baby. SQ's brother has his own place in the dispute city. He was staying over due to covid-19.

The bug screen left in the backyard was not the original screen. The Landlord's husband had removed the original broken one and replaced it with a larger one that kept falling down. The front bug screen had a small hole, which the Tenants mentioned to the Landlord, but the Landlord never replaced it. The hole got bigger and bigger over time. It was the Landlord's responsibility to maintain.

The Tenants paid the lawn care company hired by the Landlord before. That company never cleaned the bushes and only cut the grass. The Tenants informed the Landlord that they felt threatened by the lawn care person, who had yelled at the Tenants. The Tenants submitted text message correspondence with the Landlord about the issues with lawn care services in 2023.

The Tenants booked an appointment with the city for garbage pickup and emailed the information to the Landlord. The Landlord cancelled the appointment without letting the Tenants know. Some of the items that needed to be disposed of did not belong to the Tenants. Other items have been taken by the Tenants or their neighbour.

The Tenants request the return of double the security deposit. The Landlord received the Tenants' forwarding address and had lots of time since then.

## **Analysis**

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.

## **Are the Tenants entitled to compensation for monetary loss?**

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

### *Lost Employment Income*

I accept the Landlord was unable to meet with the Tenants on October 1, 2024 due to problems with her car. However, I do not find the Landlord missing an appointment to be a breach of the Act, the regulations, or the tenancy agreement that warrants compensation. I dismiss the Tenants' claim for lost employment income without leave to re-apply.

### *House Painting*

I find the Tenants were responsible for painting the bedroom back to match the rest of the house as per their agreement with the Landlord. Additionally, I find the Tenants were responsible for repairing the damage caused by their children's drawings and stickers left on many areas of the walls. I find the painting that the Tenants had done on October 1, 2024 was largely to address these issues. Therefore, I do not find the Tenants' painting costs to have resulted from any breach of the Act, the regulations, or the tenancy agreement by the Landlord. I dismiss the Tenants' claim under this part without leave to re-apply.

### *Rent Increases*

Section 41 of the Act states that a landlord must not increase rent except in accordance with Part 3 of the Act. Section 43(5) of the Act states that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Under section 42 of the Act:

- a landlord must not impose a rent increase for at least 12 months after the start of the tenancy and each subsequent rent increase
- a landlord must give a tenant notice of rent increase at least 3 months before the effective date of the increase
- a notice of a rent increase must be in the approved form

Pursuant to section 43(1) of the Act, a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (annual rent increase)
- ordered by the director on an application under section 43(3) of the Act (additional rent increase), or
- agreed to by the tenant in writing (agreed rent increase)

I accept the Landlord's evidence that the parties had verbally agreed to reduce the rent from \$2,000.00 to \$1,900.00 in exchange for set rent increases of \$100.00 for the first two years. I accept the parties skipped the first increase in 2020 due to the pandemic and increased the rent by \$100.00 starting in October 2021. I find that while this rent increase did not comply with the requirements of the Act, the principle of estoppel applies to bar the Tenants from disputing this increase.

The principle of estoppel provides that if the person having certain rights against another represents that those rights will be compromised or varied, and the party having the obligation relies upon that representation to his or her detriment, then the person making the representation is estopped from reasserting or relying upon his formal rights (*Tymchuk v. D.L.B. Properties*, 2000 SKQB 155 at para. 17).

I find the Landlord had relied on the Tenants' promise to pay the October 2021 increase to her detriment, by lowering the initial rent to \$1,900.00. I find that in these circumstances, it would be unfair for the parties to go back on their agreement or allow the Tenants to undo the rent increase.

I find the rent increase given by the Landlord effective May 2023 complied with the requirements of the Act and was given with proper notice in the approved form.

I find the Tenants paid an extra \$60.00 per month starting in November 2023 and an extra \$76.50 from August to September 2024 due to the Landlord's requests for more rent based on additional occupants in the rental unit.

Section 40 of the Act states that "rent increase" does not include an increase in rent that is for one or more additional occupants, and is authorized under the tenancy agreement. Under section 13(2)(f)(iv) of the Act, if the rent varies with the number of occupants, the tenancy agreement must set out the amount by which it varies. A landlord must not increase the rent based on the number of occupants for the addition

of an occupant (a) who is a minor, or (b) who was a minor and an occupant when the tenancy agreement was entered into but is no longer a minor (section 22.1 of the Act).

I find the parties' tenancy agreement and addendum did not specify a maximum number of permitted occupants in the rental unit, nor did they specify that the rent would vary with the number of occupants in the rental unit. I find the parties did not sign a new tenancy agreement or amendment to add other tenants and simultaneously change the rent amount in November 2023 or August 2024. As such, I find the increases paid by the Tenants starting in those months were rent increases subject to Part 3 of the Act. I find the increases were non-compliant due to problems with timing (i.e. the Landlord had issued other rent increases effective in May 2023 and May 2024), lack of notice in the approved form, and lack of signed consent from the Tenants (see Residential Tenancy Policy Guideline 37(B) for more information on agreed rent increases).

Based on the evidence presented, I do not find the Tenants would be estopped from claiming compensation for the non-compliant rent increases in November 2023 and August 2024. This is because I do not find the Landlord to have changed her position in detrimental reliance on the Tenants' promises to pay the rent increases.

Where a tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit (see Residential Tenancy Policy Guideline 13). However, if the total number of occupants living in the rental unit is unreasonable, the landlord may have cause for terminating the tenancy (section 47(1)(c) of the Act). In this case, I find SQ's parents were occupants who resided in the rental unit for extended periods when they are in Canada. I find there is insufficient evidence that SQ's brother was also an occupant. I accept the Tenants' testimony that he has his own residence in the dispute city. Considering that there were three bedrooms to accommodate the Tenants, their two young children, and SQ's parents, I do not find the evidence to suggest that the number of occupants in the rental unit would have been unreasonable.

I find the rent increase given by the Landlord effective May 2024 was given in the approved form with the proper amount of notice. I find the Landlord used the correct annual allowable rent increase percentage for 2024. However, I find the calculation was based on rent that included the November 2023 increase, which I have found was not compliant.

Under these circumstances, I find the rent should have remained at \$2,040.00 from November 2023 to April 2024, and the rent should have been increased by \$71.40 (3.5%) to \$2,111.40 per month from May 2024 to the end of the tenancy. I find the Tenants are entitled to recover overpayment due to the non-compliant rent increases as follows:

- $\$2,100.00 - \$2,040.00 = \$60.00$  per month from November 2023 to April 2024, or  $\$60.00 \times 6 \text{ months} = \$360.00$

- $\$2,173.50 - \$2,111.40 = \$61.60$  per month from May to July 2024, or  $\$61.60 \times 3$  months =  $\$184.80$
- $\$2,250.00 - \$2,111.40 = \$138.60$  per month from August to September 2024, or  $\$138.60 \times 2$  months =  $\$277.20$

Pursuant to sections 43(5) and 62(3) of the Act, I order the Landlord to reimburse the Tenants  $\$360.00 + \$184.80 + \$277.20 = \$822.00$  for the non-compliant rent increases.

**Is the Landlord entitled to compensation for unpaid utilities, damage to the rental unit, or monetary loss?**

*Utility Bill*

I find utilities such as water and sewer were not included in the monthly rent. I find the tenancy addendum further specifies that the Tenants were responsible to pay for the water bill. Based on the city's utility bill for water and sewer dated October 28, 2024, I find the Landlord is entitled to compensation of  $\$184.55$  for the Tenants' usage prior to September 23, 2024. I find the Landlord's estimate for 8 additional days of utilities usage to the end of the tenancy is reasonable in the circumstances. I find the Landlord is entitled to recover the cost of the unpaid utilities ( $\$195.82$ ) as claimed.

*Drywall Repair and Screens*

Under section 32(3) of the Act, 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.

I find the Tenants added wall-mounted shelves and a curtain rod to the master bedroom. I find that when the Tenants removed these items, they did not remove the screws or patch the screw holes. I find the number of screws left were excessive and there was also damage to the drywall surrounding the screw holes. As stated in Residential Tenancy Policy Guideline 1, the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. I find the Landlord is entitled to recover  $\$250.00$  as claimed to repair the damage.

I accept the Landlord's photo evidence that the front door screen did not have a tear in April 2021 and was in good condition. I accept the Landlord's submission that the Tenants' undated photo showing a tape over the screen was likely taken more recently. I find the broken front door screen to be damage beyond reasonable wear and tear that had likely resulted from the actions or neglect of the Tenants during the tenancy.

I find the rear sliding door screen was ripped and was left outside in the backyard. I note that if the screen did not fit, the Tenants could have returned it to the Landlord or stored it in a place where it would not get damaged. I find that more likely than not, the screen became ripped during the tenancy due to the actions or neglect of the Tenants.

I find the Landlord has provided an estimate for repairing both screens. I find the Landlord is entitled to recover this cost (\$315.00) from the Tenants.

### *Yard Maintenance*

I find the tenancy agreement addendum specifies that the Tenants were responsible for lawn care. Based on the photos and video submitted by the Landlord, I find that areas of the front and backyards were left overgrown, messy, and not properly maintained at the end of the tenancy. I note the Tenants could have hired a different company to maintain the yards if they did not like the company that the Landlord worked with, or cleaned up the yards themselves. I accept the Landlord paid \$147.00 on October 10, 2024 for lawn care. I find the Landlord is entitled to recover this amount from the Tenants.

### *Cleaning, Garbage Disposal, and Paint Stain Cleaner*

Under section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the Tenants did not leave the rental unit in a reasonably clean state when they vacated on October 1, 2024. I find the floors were very dirty and covered in drywall dust. I find there were also paint splatters on the floor. I find many belongings and garbage were left behind, most of which were in the backyard. I find the Tenants were responsible for removing these items at the time of vacating, which the Tenants did not do. I accept the Landlord's evidence that the garbage pickup scheduled by the Tenants was not until the end of October 2024 and was, in any event, cancelled by the city. I find the Landlord had to clean the rental unit and dispose of several of the Tenants' items and garbage herself.

Given the above, I find the amounts claimed by the Landlord for her time spent cleaning and removing garbage, for cleaning supplies used, for hiring a helper to clean, and to purchase a cleaner to remove paint stains, were reasonable in the circumstances. I find the Landlord is entitled to recover  $\$174.00 + \$144.00 + \$18.13 = \$336.13$  as claimed.

### **Is the Landlord entitled to retain the security deposit?**

I find the Landlord did not complete a condition inspection report with the Tenants at the start of the tenancy as required under section 23 of the Act. Therefore, I find the Landlord's right to claim against the security deposit for damage to residential property was extinguished under section 24(2)(c) of the Act.

Extinguishment for a landlord means that the landlord only has the right to claim against the security deposit, or obtain the tenant's consent to keep the security deposit, for something other than damage to residential property (e.g. unpaid rent). The landlord may also claim against the tenant for damage to residential property after returning the security deposit.

Under section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Tenants' forwarding address was delivered to the Landlord's residence via registered mail on November 13, 2024, after the tenancy had already ended (see tracking number on the cover page).

I accept it was the Landlord's husband who signed for this package while the Landlord was abroad. However, I do not find this to invalidate the service or affect the date that the Landlord is considered to have received the package. I note that leaving a record at a person's residence with an adult who apparently resides with the person would have also been an acceptable method of service (section 88(e) of the Act). Therefore, I find the Landlord was served with the Tenants' forwarding address in writing on November 13, 2024, in accordance with section 88(c) of the Act.

I find the Tenants did not agree in writing for the Landlord to retain any portion of the security deposit. I find there was no previous monetary order owing by the Tenants to the Landlord.

As such, I find the Landlord had 15 days after November 13, 2024, or until November 28, 2024, to return the security deposit to the Tenants in full or make an application to claim against it for something other than damage to residential property. I find the Landlord did not return the security deposit to the Tenants. I find the Landlord made an application that includes a claim for unpaid utilities. However, I find the Landlord did not make her application until February 27, 2025. I find the Landlord did not comply with the time limit required under section 38(1) of the Act.

The Landlord submits that there were circumstances that prevented her from applying in a timely manner.

Under section 66(1) of the Act, the director may extend a time limit established by the Act only in "exceptional circumstances".

As explained in Residential Tenancy Policy Guideline 36, the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. An example of what could be considered "exceptional" circumstances could be where the party was in the hospital at all material times.

I find the Landlord returned to the country on or around November 30, 2024. I find the Landlord provided some evidence of her prescriptions, medical records for her pet, and undated photos of PA's hospital stay. While I am sympathetic to these difficulties, I am unable to find that they amounted to "exceptional" circumstances that could justify extending the 15-day time limit under section 38(1) of the Act to nearly 3 months after the deadline, from November 28, 2024 to February 27, 2025. I note that the Landlord only needed to either return the security deposit to the Tenants or file an application within the 15 days. The Landlord would still have had time to gather and submit evidence after making the application. Therefore, I do not find that the time limit could be extended.

Section 38(6)(b) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In light of the above, I find the Tenants are entitled to the return of double the security deposit, plus applicable interest, all of which is to be set off against the amounts awarded to the Landlord in this decision.

Interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled. The interest rate on deposits was 0% from 2019 to 2022, 1.95% in 2023, and 2.7% in 2024. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to interest of \$38.23 on the security deposit from the start of the tenancy (July 1, 2019) to the end of the tenancy (October 1, 2024).

### **Are the parties entitled to recover their filing fees?**

Both parties have been partially successful in their applications. I find the parties are entitled to recover their filing fees from each other under section 72(1) of the Act.

## **Conclusion**

The Landlord is entitled to compensation totaling \$1,343.95.

The Tenants are entitled to compensation totaling \$2,860.23.

Pursuant to sections 62(3), 67, and 72(1) of the Act, I grant the Tenants a Monetary Order of **\$1,516.28** for the difference, calculated as follows:

Item	Amount
<b>Amounts Payable by Landlord to Tenants</b>	
Non-compliant Rent Increases	\$822.00
Double the Security Deposit (\$950.00 × 2)	\$1,900.00

Interest on Security Deposit	\$38.23
Tenants' Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$2,860.23</b>
<b>Less Amounts Payable by Tenants to Landlord</b>	
Utility Bill	- \$195.82
Drywall Repair	- \$250.00
Bug Screens	- \$315.00
Yard Maintenance	- \$147.00
Cleaning and Garbage Disposal	- \$174.00
Cleaning Help	- \$144.00
Paint Stain Cleaner	- \$18.13
Landlord's Filing Fee	- \$100.00
<b>Subtotal</b>	<b>- \$1,343.95</b>
<b>Net Payable by Landlord to Tenants</b>	<b>\$1,516.28</b>

This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

The remaining amounts claimed by the parties are dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 1, 2025

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Residential Tenancy Branch