

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

and the Landlords' Application for Dispute Resolution under the Act for:

- 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

S.S. and T.K. attended the hearing for the Tenants.

X.B. and B.F., representatives of the property management company N.S.R.I. that acts as agent for the Landlords attended the hearing for the Landlords.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlords confirmed having received the Proceeding Package from the Tenants by Registered Mail on May 6, 2025. I find that the Landlords were served with the Proceeding Package in accordance with section 89(1) of the Act.

The Tenants confirmed having received the Proceeding Package from the Landlords by pre-agreed email on April 30, 2025. I find that Tenants were served with the Proceeding Package in accordance with section 89(1) of the Act.

Service of Evidence

The Tenant said in their affirmed testimony that they sent evidence to the Landlords in two packages by Registered Mail on May 8 and 20, 2025. The Landlords confirmed receipt of both packages. I find that the Landlords were served with evidence in accordance with section 88 of the Act.

The Tenants confirmed having received evidence from the Landlords by pre-agreed email on May 20, June 3, and June 10, 2025. I find that the Tenants were served with evidence in accordance with section 88 of the Act.

Issues to be Decided

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to an order to end the tenancy based on a frustrated tenancy agreement?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

Background and Evidence

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

The parties agree that the tenancy began on September 1, 2024. The Landlords received a security deposit in the amount of \$1,450.00 and a pet damage deposit in the amount of \$1,450.00 from the Tenants on August 2, 2024. The parties did not complete a Condition Inspection Report at the beginning of the tenancy.

The parties agree that the rental unit is presently uninhabitable following a fire and flood incident on April 22, 2025. The parties removed their belongings from the rental unit and returned possession to the Landlords on April 30, 2025. The fire which activated the sprinkler system was started by the Tenants while using a culinary torch which they say was faulty.

The parties agree that X.B. as agent for the Landlords attended at the rental unit with the Tenants on April 22, 2025. X.B. asked T.K. to provide his passport as identification

so that she could photograph it for insurance purposes. X.B. then left the rental unit and withheld the passport as collateral against the Tenants for compensation.

The Tenants applied for dispute resolution with respect to frustration of the tenancy agreement and for an order requiring the Landlords to comply with the Act, specifically to return the passport and deposits on April 28, 2025.

The parties agree that local police intervened, and that the passport was returned by X.B. to T.K. on April 29, 2025.

The parties agree that they inspected the condition of the rental unit at the end of the tenancy on April 30, 2025, and that the Tenants refused to sign the Condition Inspection Report because they disagreed with what was written on the report by X.B. The Landlords did not provide a copy of the Condition Inspection Report to the Tenants or submit a copy in evidence.

The Landlords submit that the damage to the rental unit and building is extensive and that total costs associated with the damage are unknown. As of the date of the hearing they incurred a loss of \$700.00 as the deductible for their insurance, and electricity costs in the amount of \$139.68 for the billing period May 1 to 26, 2025. Electricity costs are attributed to restoration work and the use of flood damage drying equipment after the tenancy ended.

The Landlords also submitted an invoice in the amount of \$840.00 for the services of agent X.B. in preparing the claim against the Tenants. X.B. explained that her hourly rate is \$40.00 per hour and that she completed at least 16 hours of work to prepare the application.

The parties discussed at the hearing a black utility cart which was provided for use by the Tenants with the furnished rental unit. The Tenants removed the utility cart with their personal belongings in error and the item remains in their possession. The parties agreed that the Tenants would return the utility cart to the Landlords through agent X.B. and that if they fail to do so it remains open to the Landlords to seek compensation for the cost to replace the item.

Analysis

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

As of the date of the hearing, the passport that was seized by the agent for the Landlords contrary to the Act had been resolved by local police and the tenancy had ended. I find it is no longer necessary to make any order to give effect to the rights, obligations and prohibitions under the Act.

The Tenants' application for an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to an order to end the tenancy based on a frustrated tenancy agreement?

Section 44(1)(e) of the Act states that a tenancy ends if the tenancy agreement is frustrated.

As of the date of the hearing, the parties agree that tenancy had ended on or about April 30, 2025. I find it is no longer necessary to make an order to end the tenancy based on a frustrated tenancy agreement.

The Tenants' application for an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 59(2) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure states that to the extent possible, the applicant must submit a detailed calculation of any monetary claim being made at the time the application is submitted.

The Landlords did not submit a detailed calculation of the monetary claim at the time the application was submitted or at any other time during or in advance of the hearing. The Landlords referred to unknown costs which went beyond those cited in the particulars of the application and evidence. Only that which was specifically discernable in the application and evidence has been considered.

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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for damage to the rental unit or common areas.

Section 37(2) 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.

It is undisputed by the parties that the rental unit incurred significant damage at the end of the tenancy and that the damage was initiated by a culinary torch in the conduct of the Tenants. I accept that this tool was faulty and that the Tenants acted to minimize damage.

I find that the Tenant failed to comply with the Act in that they did not leave the rental unit undamaged and that they did not repair damage to the rental unit that was caused by their actions. I find that a known loss as of the date of the hearing in the amount of \$839.68 resulted from this failure to comply, which represents the Landlords' insurance deductible for restoration work and electricity costs to facilitate the restoration work for the period May 1 to 26, 2025. I find that the Landlords acted reasonably to minimize that loss in that they were insured.

With respect to the service fees of agent X.B. in preparing the claim against the Tenants, this cost is not directly attributed to damage caused by the Tenants and costs associated with making an application for dispute resolution for which the Landlords may seek compensation are limited to return of the filing fee, considered below.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlords are entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$839.68.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

The Landlords applied to retain both the security deposit and pet damage deposit in full.

With respect to the pet damage deposit, section 1 of the Act defines “pet damage deposit” as money paid by a tenant to a landlord that is to be held as security for damage to residential property **caused by a pet**. Section 38(7) of the Act states that a pet damage deposit may be used only for damage **caused by a pet**.

Section 24(2) of the Act states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 of the Act with respect to completing a Condition Inspection Report and giving the tenant a copy of that report in accordance with the regulations at the beginning of the tenancy.

Section 38(1) of the Act states that the landlord must repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Subsection (6) states that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Landlords’ right to claim against the security deposit and pet damage deposit for damage to the residential property is extinguished because they did not complete the Condition Inspection Report at the beginning of the tenancy. Further, the Landlords had no right to claim against the pet damage deposit as the damage was not attributed to a pet, but to the fire and flood.

Residential Tenancy Guideline 17 addresses the process for returning security deposits at the end of a tenancy and how deposits are handled when one or both parties in a tenancy extinguish their rights to the security deposit.

Section F(3) says that there are consequences for landlords if they do not comply with the Act with respect to deposits, specifically that the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act, whether or not the landlord may have a valid monetary claim.

Therefore, I dismiss the Landlords’ application to retain the security deposit and pet damage deposit. As the Landlords improperly applied to withhold the deposits where their right was extinguished, I find the Tenants are entitled to a monetary award in the amount of \$5,845.20, for double the return of the deposits, plus interest (\$45.20 calculated from August 2, 2024, to June 17, 2025).

The Landlord may still file an application for lost revenue and damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing. This is not an extension of any applicable limitation period.

Section 60(1) of the Act states that an application for dispute resolution must be made within two years of the date that the tenancy to which the matter relates ends.

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

As the Landlords were partially successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenants' application is dismissed in its entirety, without leave to reapply.

I grant the Tenants a Monetary Order in the amount of **\$4,905.52** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$839.68
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$5,845.20
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	-\$100.00
Total Amount	\$4,905.52

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this 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 Act.

Dated: June 17, 2025

Residential Tenancy Branch