Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL / MNDCT, MNSD, FFT

Introduction

This reconvened hearing dealt with applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

In its Application the Landlord seeks:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain the Tenants' security deposit and pet damage deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenants under section 72 of the Act.

In their Application the Tenants seek:

- A Monetary Order for loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act;
- A Monetary Order for the return their security deposit and pet damage deposit under sections 38 and 67
  of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Previous hearings took place on January 10, March 10, and April 17, 2025 which were adjourned due to time constraints. This Decision should be read in conjunction with the

previous interim decisions which addressed service of records, withdrawal of four of the Landlord's claims and joining of the Applications.

An Agent attended the hearings for the Landlord. The Tenants attended the hearings. They were also represented by legal counsel at all hearings. Words using the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue – Additional Evidence

Towards the end of the third hearing, the Landlord's Agent requested permission to submit additional written evidence, namely, reports prepared by a pest control company. This evidence related to the Tenants' claim for rent abatement. The reports were not provided to the Residential Tenancy Branch (the Branch) or the Tenants by the Landlord at any stage. It was acknowledged from the Landlord's side that these records were likely to have been in its possession from the date of the inspections in May and June 2024, but further copies were made available to them in the week leading up to the third hearing. The Tenants objected to the Landlord's request on the ground of procedural fairness and efficiency.

Rule 3.19 of the Branch *Rules of Procedure* (the Rules) states that no additional evidence may be submitted after the hearing starts, except as directed by the arbitrator. Rule 3.19 also states both parties must be given an opportunity to be heard on the question of admitting additional evidence. Rule 8.1 also states the arbitrator has the discretion to receive additional evidence after the hearing has ended.

I find the Landlord's request to submit additional evidence came well after the parties' submissions on the Tenants claim for rent abatement had begun. Also, in all likelihood it seemed the additional evidence in question was in the Landlord's possession before the first hearing where the claim was first addressed on March 10, 2025 took place. The Tenants also objected to the additional evidence. I agree with the reasoning put forward by the Tenants' side in that if this additional evidence were to be allowed, this would have prolonged an already protracted dispute resolution process and be procedurally unfair. Given this, the Landlord's request was denied.

Issues to be Decided

- Are either party entitled to the requested compensation?

- Is the Landlord entitled to retain some, or all of the Tenants' security deposit and pet damage deposit?
- Are the Tenants entitled to a Monetary Order for the return of some, or all, of their deposits?
- Are either party entitled to recover the cost of the filing fee for their respective Applications from the other?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on January 1, 2022 for a fixed term ending December 31, 2022 and continued on a month-to-month basis after that.
- The parties then entered into a second written agreement effective January 1, 2024 for a fixed term ending December 31, 2024 and was again set to continue on a month-to-month after that date.
- There are written tenancy agreements, copies of which were entered into evidence.
- Rent was $4,700.00 per month due on the first day of the month throughout the tenancy.
- A security deposit and a pet damage deposit of $2,350.00 each were paid by the Tenants. The Landlord sent the Tenants a cheque for the return of $257.76 from these amounts, though the Tenants took the position this has not and could not be cashed as the Tenants do not have a joint account.
- The Tenants vacated the rental unit on October 31, 2024.
- The rental unit is a three-bedroom, two-bathroom ground floor apartment unit in Vancouver.
- The Tenants participated in both the start of tenancy and the end of tenancy inspections of the rental unit and provided their forwarding address in writing to the Landlord on the end of tenancy condition inspection report on October 31, 2024.

The Landlord's Claims

The Landlord's Agent testified as follows. On October 11, 2024, the Tenants provided notice to end the tenancy, effective October 31. The Tenants were informed that they would have to pay rent for November as well, given the short notice. Rent for November was taken from the Tenants' banking via pre-authorized payment, though it had been discussed previously that this amount would not be withdrawn, rather it would be disputed through an application to the Branch. There was apparently insufficient time from the Landlord's side to cancel the payment which was also not refunded to the Tenants.

The rental unit was advertised online from November 1, 2024 but was not rented until around four months later. The Landlord seeks to recover loss of rent for the month of December 2024, since the fixed term of this tenancy was set to run to this point, as well as authority to keep the rent paid for November they still hold.

The Landlord took the position that the rental unit was advertised at a lower rent than the $4,700.00 per month paid by the Tenants. A screenshot of a posting contained in an email dated December 16, 2024 was provided as evidence, in addition to email correspondence from November 21, where the building manager and the property manager discuss a viewing that took place, and the prospective tenants asked if the $4,700.00 rent was negotiable. The property manager is seen to say it was not.

The Landlord also relies on the term at paragraph 5 of the tenancy agreement and claims liquidated damages of $2,350.00 as the tenancy was ended before the end of the fixed term. Per the Landlord's Agent, the Tenants approached the Landlord to sign for a new fixed term, with the assurance that any rent increase would be waived in exchange for this.

It was argued that when notified of a mice problem in the rental unit, the Landlord took proactive steps to resolve the issue. On April 24, 2024 a plumber was instructed to remove an appliance from the kitchen to address a mice nest that was present. There was no indication from the Tenants they were thinking of ending the tenancy before their email of October 11, and there had been no reports of mice since June. The Landlord's Agent did not dispute there was an infestation of mice in the rental unit, but argued that the Tenants should have informed the Landlord of it sooner.

The Landlord also claims compensation for costs associated with painting the rental unit after the tenancy ended. Post-tenancy images of the rental unit were provided as evidence. It was the Landlord's position there were taken on October 31, 2024, after the inspection had concluded and the Tenants had vacated. The Landlord took the position there were multiple scratches, stains and areas of peeling to the paint finish which ultimately required re-painting.

As evidence, the Landlord provided an invoice from a contractor for $1,800.00 which included other unrelated work. It was the Landlord's position that the painting element of the work cost $800.00. The condition inspection report indicates the rental unit was newly painted at the start of the tenancy. Whilst it was acknowledged the end of tenancy report states "clean" throughout, it was submitted this was due to on an error on the part of the building manager.

The Landlord seeks compensation of $6,000.00 for replacing the granite countertops in the rental unit after the tenancy ended. I was referred to one image provided as evidence by the Landlord, and it was argued the white countertop was left with yellow stains near the cooking area, and that there were more stains elsewhere on the surface which were not shown in the picture.

The whole countertop was replaced as could not be cleaned, per the Landlord's Agent. The section of the end of tenancy condition inspection report relating to the cabinets, counters, closets and cupboards in the kitchen record the condition as "clean". The amount sought is based on an invoice received after the first hearing and was not provided as evidence.

The Landlord's claims, after the withdrawals, are summarized as follows:

Description	**Amount**
Rent for December 2024	$4,700.00
Liquidated damages	$2,350.00
Painting	$800.00
Countertop replacement	$6,000.00
Total	**$13,850.00**

As previously noted, the Landlord also seeks permission to retain the rent taken for November 2024's rent.

The Tenants' response

Counsel for the Tenants submitted there was no requirement for the Tenants to have signed a second written tenancy agreement with a liquidated damages clause, and the tenancy should have continued on a month-to-month basis after December 31, 2022 instead. Further, it is not appropriate to apply the liquidated damages clause as the Landlord did not repair the rental unit and deal with the rodent infestation and provide what should be a luxury unit for $4,700.00 per month.

The Tenants notified the Landlord of a mice infestation on April 21, 2024, which was not effectively addressed from their point of view. Given the tenancy was set to end at the end of December 2024 in any case – only two months away – it was argued it would be preposterous for the Landlord to be awarded liquidated damages too.

On October 7, the property manager advised the Tenants that another mouse had been seen outside the rental unit. Given the colder months were approaching, it was believed by the Tenants this would draw mice inside, so with concern for their children, they ended the tenancy in correspondence on October 11.

The notion that the Tenants are liable for rent for December was disputed, given this was more than adequate notice to find new tenants. Further, the rent paid for November should be returned as the Landlord had agreed not to charge for this and would instead claim through the Branch, per an email provided as evidence.

It was submitted that the Tenants were agreeable and friendly people and tried to work with the Landlord on resolving the mice issue, though given their lack of legal expertise, they did not provide formal notice to the Landlord that the mice issue was a breach of a material term of the tenancy agreement and they would end the agreement based on this.

The Tenants testified that they are not experts on pests. Whilst they had suspicions of mice activity and they never saw any at first but reported to the Landlord once they did see one on the same day. The rental unit is near a grocery store and a bakery which the Tenants indicated was an important consideration. In total, the Tenants killed 25 mice in the rental unit. Once they asked the Landlord about the issue, they responded and took steps they wanted to take including removing appliances to check for mice. Despite the problems, they wanted to continue living in the rental unit for the benefit of their children but had to spend time cleaning and killing mice once the issue was noted. The Tenants

were away on vacation in July and August, however, but when the dead mouse was found October 7, they wanted to move.

I was referred to record to email from May 1 and July 17 where the Tenants appear to notify the Landlord of the rodent issue. Whilst it was acknowledged that the Tenants provided short notice to end the tenancy effective October 31, 2024, given the ongoing issues with rodents, it was the Tenants' position they were entitled to do this and they had no choice but to take this course of action for their and their children's health and safety given the discovery of a mouse outside the rental unit on October 7, and the fear that given colder months were approaching, rodents would be moving indoors.

The notion there were no reports of mice after June 2024 was disputed by the Tenants and I was referred to an email from on of the Tenants to the Landlord from July 2 where they write "some mice activity yesterday, caught it today in the morning, hopefully an isolated case". A photograph showing a dead mouse in a trap is attached to the correspondence.

It was argued from the Tenants' side that the post-tenancy condition of the walls in the condition inspection report was recorded as "clean", other than the entry area which simply records "needs". Further, during the end of tenancy inspection, the Landlord's representative present was not taking pictures, so the origin of the images provided by the Landlord was unclear to them. The Tenants affirmed the images and videos they provided as evidence were taken during the move-out inspection.

The Tenants argued that the rental unit was left in a good and acceptable condition given the tenancy was approaching three years in length and whilst it was acknowledged there were a few scuffs on the walls, this amounted to reasonable wear and tear.

The Landlord's claim regarding the countertop was disputed from the Tenants' side with it being argued that no issues were recorded in the end of tenancy condition inspection report and that the image provided as evidence by the Landlord was of low quality. Further, the images provided by the Tenants show a clean countertop with no visible damage and that there was no evidence from the Landlord's side to support the amount claimed or that cleaning was not an alternative option to replacing the countertop.

The Tenants' claims

The Tenants seek a 50% retroactive rent abatement for the months of May, and July to October 2024 – a period of five months in total. The amount sought on the Monetary Order Worksheet provided with the Tenants' Application is given as $10,575.00, though I note the correct figure ought to be $11,750.00 ($2,350.00 x 5). Rent for June 2024 does not play a part in this claim as the Tenants received a rent reduction for this month already through the mutual agreement of the parties.

The Tenants took the position that the rental unit was priced at luxury rates of $4,700.00 for a suite with just over 1,000 square feet of indoor space and a similar amount of outdoor space and that the Landlord failed to maintain the suite in an acceptable manner, leading to a mice infestation, which the Landlord also failed to adequately deal with once notified.

Per the Tenants, the mice infestation began in April 2024. On April 21, the Tenants observed a mouse in the kitchen of the rental unit and informed the Landlord of this. A plan was put in place to address the mice issue, specifically to have pest control personnel visit weekly and have meshing installed on the outside of the rental unit, but the Landlord did not follow through on this.

During the infestation, the Tenants followed the recommendations given by the Landlord which included storing their food in sealed containers, not leaving food out for their dogs and keeping the patio doors closed. Records of email correspondence from the Tenants to an agent for the Landlord attaching images of rodents caught in traps and food in sealed containers were provided as evidence.

The Tenants caught approximately one mouse per day between April 21 and the end of May 2024. As evidence, the Tenants provided photographs of the interior and exterior of the rental unit showing holes in the walls and gaps in the door as well as email correspondence providing updates to the Landlord on the situation.

The Tenants took the position that they were unable to have guests, leave the patio door open, make use of the outdoor area of the rental unit and had concerns about the impact the presence of the mice would have on the health of their children and pets. They also heard mice moving around in the walls of the rental unit at night.

When the agreement for the 50% rent abatement for June 2024 was reached, it was the Tenants' understanding that this would be an ongoing reduction until the matter was fully resolved. Given the issue was not fully resolved and was prevalent in May as well, the same abatement is sought for these months.

The Tenants affirmed the pest control company engaged by the Landlord came to do an initial assessment, then did not come for a month after that. There were visits at the end of May then mid-June. The mice issue then became less intense and the Tenants took a vacation so were away from the rental unit for periods in July and August.

By early June, there were no further mice found in the rental unit so the Tenants were hopeful the infestation was over, but on July 2 another mouse was found. The Tenants reported this to the Landlord in an email which was references earlier in this Decision.

The Tenants were on vacation from July 26 to August 10 and again from August 24 to 31. No mice were noticed in September, but they heard sounds in the walls and their dogs appeared to be noticing rodent activity. On October 7, when the building manager reported to the Tenants that another mouse had been found, the Tenants decided to end the tenancy, as previously noted, and vacated on October 30. It was argued that as the fixed-term was ending in December in any case, there was minimal impact on the Landlord by the Tenants vacating when they did.

The Tenants provided further affirmed testimony as follows. The mice issue began in the beginning of April 2024. This became apparent when their dogs began to behave differently. They did not think this was a major issue at the time. When the issue got worse, they spoke with the building manager, JP, who initially said mice were common in the area, but a plan was ultimately agreed upon to seal food and pet food, keep the patio door closed, and keep things clean in the rental unit. The Landlord was also to be responsible for weekly pest control visits to the rental unit. Pest control came to assess the situation, but they did not show up again and the activity started to escalate. It then became apparent that mice could get in through holes in the building walls. The Tenants said they could not use the kitchen of rental unit for a week because of the situation and ate out at restaurants instead. They set traps of their own. For the first two weeks the issue was "insane", and it was really bad for a month.

Whilst it was accepted that some months were more severe than others,
it was argued from the Tenants' perspective that as the mice issue was not fully resolved and entirely eradicated for the affected period, and the Tenants' ability to use

the rental unit to the fullest and their daily lives were still affected, a 50% across the board rent abatement was appropriate. I was referred to a previous decision issued by an arbitrator of the Residential Tenancy Branch where $13,000.00 in compensation by way of retroactive rent abatement was issued for a range of issues, including a rat infestation.

Though it was the Tenants' understanding that a 50% rent reduction would be applied from June onwards until the mice issue was remedied and only a one-off reduction was applied, and that the pest control company would be coming weekly, which did not happen from their point of view, the sole follow up from the Tenants was a verbal one in June, which prompted a visit. It was argued that it was not the Tenants' job to follow up on these matters, and the Landlord was ultimately responsible for this.

The Tenants called a witness, JP, who affirmed as follows. They are a building manager and worked for the Landlord for a period of around six and a half months, until they were fired. The Tenants called them in May 2024 about a mouse issue. They contacted pest control, set traps, and pulled the dishwasher away from the wall and noted mice activity, possibly one or two families of them. A week after, the Tenant called them to say they had caught six mice. The matter was escalated, and they attended the rental unit again with a manager for the Landlord, IH, and they noted gaps in the building around the patio area. They spoke with a pest control operative about dealing with the issue, though heard nothing further before being fired in or around June 2024. Based on the frequency of the mice being caught, they believed the issue to be serious. Attempts to install a screen door were unsuccessful, as the door rail was too narrow. They did not observe pest control technicians attending the rental unit themselves, though acknowledged they could have visited with the assistance of other members of the Landlord's staff.

During JP's testimony, I was referred to an email from JP on April 29, 2024. In the email, JP is seen to write "[rental unit number] has a mouse issue. Upon inspection, I found dog food bowls and bags near an open balcony, along with food on a tray table nearby. The exterminators have not responded to my call".

I was also referred to an email dated May 1, 2024 from JP to EB, stating "the [pest control company] technician is currently in the suite with [FB]. He has identified the same potential entry points as [Landlord's staff] and I did on Monday. He mentioned that they are getting in through the open patio door and they are living in the wall behind the dishwasher".

JP affirmed that they did not recall any reports of mice in the rental unit in December 2023 and that the first time they heard of the issue was in April 2024. Also, they advised the Tenants to take measures such as putting food in containers before the pest control company did.

It was argued that the Tenants only saw two visits from the pest control company take place, the Landlord did not effectively deal with the issue and did not attend at least eight times, as alleged. Further, local bylaws state “if pests have infested land, or any building or accessory building on it, the owner of the land must eliminate the infestation”, which the Landlord did not do.

Additionally, the mice infestation was at its worse in May 2024 with around a mouse per day being caught, which brought with it exposure to potentially harmful viruses. A 50% rent reduction was agreed to until the matter was resolved fully, which did not happen. The effect of the infestation affected the Tenants’ right to quiet enjoyment as they could not fully use the outdoor patio.

The Tenants also seek the return of their security deposit and pet damage deposit. It was the Tenants’ position that they participated in the inspections of the rental unit at the start and end of the tenancy, so there was no extinguishment of the right to the return of the deposits. The Tenants’ forwarding address was provided on the end of tenancy condition inspection report on October 31, 2024. A cheque for $257.76 was sent back to the Tenants by the Landlord, but the Tenants were unable to cash this as it was made out to both Tenants, and they do not have a joint account.

Rent for November 2024 was withdrawn from the Tenant’s bank account by the Landlord without permission from the Tenants. The tenancy had ended when the payment was taken. It was further argued that there had been assurances from the Landlord’s Agent that the payment would not be taken, and entitlement to this sum would be determined through a claim to the Branch. I was referred to records of email correspondence on the issue provided by the Tenants.

The amount taken by the Landlord for November 2024 was $5,129.16. The extra $429.16 was taken in addition to the usual $4,700.00 per month as the Tenants had agreed to pay for fixing broken glass in the rental unit. The Landlord’s entitlement to be compensated for November’s rent was disputed, and the Tenants seek an order for reimbursement of the payment taken.

As already mentioned, on October 11, 2024 the Tenants provided notice they would be vacating the rental unit by the end of the month. It was argued they had no choice in this issue because of the mice infestation.

It was submitted that the Tenants found difficulty in locating a new residence in Vancouver that was comparable to the rental unit. The Tenants now pay $7,500.00 per month for their new residence. Whilst it is of a similar size to the rental unit, the majority of the square footage is indoor. A copy of the Tenants' new tenancy agreement was provided as evidence. It was acknowledged the new building as a luxury one, though it has less amenities in comparison to the residential property where the rental unit is located. As a result, the Tenants seek compensation of $5,600.00 which represents the increased rent for November and December 2024 – the remainder of the tenancy in respect of the rental unit.

The Tenants also seek to recover the costs of moving from the rental unit to their new residence and provided receipts for these as evidence. The Tenants hired a U-Haul and paid a handyman to assist with the move since they were not moving far. It was reiterated that from the Tenants' point of view, they had no choice but to move.

The Tenants' claims are summarized as follows:

Item	**Amount**
Rent abatement	$10,575.00
Return of deposits, plus interest	$4,891.76
Reimbursement for November 2024's rent	$4,700.00
Increased rent for November and December 2024	$5,600.00
U-Haul costs	$72.92
Handyman costs	$525.00
Total	**$26,364.68**

The Landlord's response

The Landlord's Agent referred me to email correspondence from May 2024 between the Tenants and the building manager where the mice issue was discussed. My attention was drawn to references to the pest control company attending the rental unit in late April and early May. The Tenants appeared to note no evidence of mice in the rental unit on May 8, but their dogs had been searching in corners for two to three months.

When the Tenants then reported seeing mice inside the rental unit, pest control visits were arranged for May 1, 15, 23 and 30. Further visits took place on June 7, 16 and 27. The Landlord's Agent affirmed they let the pest control personnel to the rental unit themselves on June 16, when the traps were monitored.

It was argued that the photographs taken by the Tenants showing mice being caught were from outside the rental unit, which should be accounted for.

The Landlord's Agent affirmed that on July 3, they discussed with one of the Tenants that the 50% abatement was not an ongoing one, just a one-off.

It was argued from the Landlord's side that whilst it was the Landlord's duty to repair and maintain the residential property, the Tenants failed to adequately notify of any issues in relation to the presence of mice within a reasonable period. Further, the Landlord's Agent affirmed they saw the patio door being left open and garbage being left outside during visits to the rental unit, including a visit on May 22.

It was argued that there was no basis for the request for a rent reduction for July 2024 onwards. I was referred to an email from the Tenants dated June 18, 2024 to the Landlord where the Tenant writes "[pest control company] came twice since then, no mice on traps which is great news, so I guess we were able to trap all of them on my electric trap and the total was not more than 20-25 if I am correct, I kept the records and shared with you as it happened. So far we did not notice any mice activity inside the apartment, so that intervention in the wall and outside seemed to have prevented them from getting into the apartment".

Further, in October 2024 when the Tenants gave notice to end the tenancy after a mouse was found, it was done so by the building manager in the playground area near the rental unit and was not found by the Tenants. In the Tenants' email of October 11, no reference was made to five months of mice issues which does not match with the rent abatement claimed.

The Landlord's Operations Supervisor for the residential property, IH, was called as a witness who affirmed as follows. They were unsure when they were first notified of the mice issue in the rental unit, but they attended the following day. They observed traps had been placed, the kickplate for the kitchen was removed and steel wool and expanding foam had been put in, in an apparent attempt to stop rodents from coming in. They came back in the following days to open up the drywall, remove insulation and

sanitize with eucalyptus spray and put mould control down. The drywall was opened and closed within the same day. There appeared to be no links to the outside. They were instructed by the pest control company to lift paving stones around the perimeter of the residential property and fill in any holes, which they did. During one visit to the rental unit, they observed the patio door being left open which they reported to the Landlord. They were at the rental unit for four days in total during May. They believe the mice came into the rental unit under the kitchen door or via the open patio door since there were no other apparent holes. The pest control company told them the mice were emanating from the patio area, with nothing more precise being conveyed.

The Landlord called SP as a witness who affirmed as follows. They are an Operations Manager with the pest control company hired by the Landlord. The residential property is in their portfolio of work. Their service records indicate the rental unit was attended on May 1, 13, 23 and 31, June 7, 14, 21 and 28.

SP affirmed technicians notes in the reports they had access to indicated as follows:

- May 1 – completed today's monthly pest control service. Inspected and treated [rental unit] for mice. Upon inspection of unit high amounts of rodent droppings were seen under sink and dishwasher area. Sealed some potential entry ways with spray foam and steel wool under kitchen counter area. No new activity seen in interior or exterior service areas.
- May 13 – spoke with resident of [rental unit]. High mouse activity noted in kitchen/living room area and walls of bedroom. Noted sliding door open for long periods of time. Recommended installing screen to allow airflow but block mice. Exterior patio appears to have mouse entry point near pavers by kitchen sliding door. Will install screen near toe kick to block mice. Will seal with mesh or steel wool with a cost of $375.00 plus tax.
- May 23 – Arrived to inspect entry for mice in [rental unit] no rodent sighting inside, but very high rodent activity on patio. Tenant refused poison due to concerns about dogs coming into contact. Deployed 5 tunnel traps around perimeter of patio. Redeployed existing three traps. One mouse caught since last visit.
- May 31 – Arrived for weekly follow up. Gained access through tenant. Patio door open upon arrival. No mice caught in tenants' own electric trap. Traps on patio remained untouched and still set. Recommended cleaning up dog poop to prevent "possible rodents".

- June 7 – Escorted by [Landlord's employee] to rental unit. One mouse captured and disposed of in loading bay. Spoke with tenant in [rental unit]. No reports of rodents seen since last visit. Patio door open upon arrival and had dog faeces around. Tenant has moved personal traps inside with no captures. Recommended removing dog faeces again to avoid attracting rodents. No other traps have mice in.
- June 14 – Access by tenant and landlord employee. Tenant reported no mice in personal traps. No new droppings in kitchen under fridge. All other traps remained set and untriggered.
- June 21 – Provided access by landlord employee. One mouse caught in trap closest to courtyard. Disposed of and re-set trap. No other rodent signs. No rodent droppings around patio.
- June 28 – No rodents detected. Re-set snap traps that were accidentally set off. Recommend for tenant to clean up dog poop and urine more often to not attract rodents.

SP believes the sealing service referenced in the May 13 notes was proceeded with, but was not sure. They indicated that in their opinion compliance with instructions from tenants is very important and if the Tenants had left the patio door open, it would probably affect timeline for resolving the issue and make it go on for longer than needed.

They were unsure if June 28 was the last attendance at residential property. They never attended the rental unit themselves as technicians under their supervision did this. All visits described were carried out by one technician, apart from the May 13 visit, which was performed by a wildlife technician. Neither technician is with the company any longer.

SP affirmed that in their view, it is possible for poison to be harmful to dogs if they are able to chew through the casing of the trap.

It was submitted from the Landlord's side that SP's testimony confirms the Landlord had pest control technicians attend the rental unit and did so on a weekly basis, as requested by the Tenants. Further, this was done until no mice were found. It was argued that keeping the patio door shut from the Tenants' side would not have been a significant step, given the severity of the situation, which they failed to do. Further, the reports indicate dog faeces and urine were found on the patio, which attracted rodents.

The Landlord's Agent disputed the Tenants were entitled to a rent abatement for the period they were on vacation for, during which time they were away from the rental unit in any case. There were no mice found again until October 7 when the building manager found one in a common area.

Regarding the partial return of the deposits, it was argued that the Tenants can sign the back of the cheque, and this will enable it to be cashed.

It was the Landlord's position that the rent for November 2024 was owed by the Tenants as they provided insufficient notice to end the tenancy, and were under a fixed term for a further two months in any case. Given this, the payment was not returned to the Tenants.

The Landlord's Agent argued that rent charged by a landlord is based on interior square footage, not exterior. Further, it was submitted that the Tenants' new residence has 2,679 square feet of interior space, 3 bedrooms, 3.5 bathrooms and with one unit per floor is in a unique building. In comparison, the rental unit had 1,068 square feet of interior space. Additionally, the two months of increased rent claimed by the Tenants recognises the fixed term of the tenancy agreement, whereas under previous claims of theirs, it was denied this was enforceable. On these grounds, the claim was disputed.

The Tenants' response

In response to the Landlord's submissions, the Tenants' side argued that the testimony of SP was hearsay and should not be considered. It was suggested that the Tenants' vacations in July and August were related to them not wanting to be in the rental unit. The notion exterior space in a rental unit was not important was disputed and it was argued that the Tenants' new residence was better value when considering interior space.

Analysis

Rule 6.6 of the Rules states that 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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does

not comply with the Act, the Regulation, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

In order to be successful in their claim, the applicant must prove on a balance of probabilities that the respondent breached the Act, Regulation, or tenancy agreement, that this breach caused the applicant to incur a loss, and that they took reasonable steps to mitigate this loss.

As set out in Policy Guideline 16 - *Compensation for Damage or Loss*, a party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Also, section 67 of the Act states that if damage or loss results from a party not complying with this Act, the Regulation, or a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Typically, I would address each of the claims raised in the parties' Applications in turn, though in this case, I find a number of the claims overlap with one another and can be addressed simultaneously.

Claims regarding rent

The Landlord seeks authorization to retain the rent taken for November 2024 after the tenancy had ended, and compensation for December's rent. The Tenants seek the return of the rent paid for November.

It was undisputed that the parties had entered into a second fixed term which was set to run to December 31, 2024 and that on October 11 the Tenants had emailed the Landlord advising they would end the tenancy effective at the end of October.

I also find that on October 21, the Tenant then emails the Landlord referencing a breach of section 32 of the Act as being "valid ground to terminate the tenancy agreement early". The Landlord's Agent indicates they will treat the notice as being effective November 30.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. A tenant is obligated to pay rent due under a tenancy agreement until the tenancy ends.

Sections 45(1) and (2) of the Act set out how tenants may end both a periodic and a fixed term tenancy by giving notice. In both cases, the effective date of the tenant's notice is at least a month after the landlord receives the notice.

Section 45(3) of the Act also allows a tenant to end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant give written notice of the failure. In the circumstances relating to a breach of a material term, under the provisions of section 53(3) of the Act, the effective day of the notice does not have to be the final day of the period rent is due and would not automatically correct to this.

It was undisputed that whilst the Tenants had referenced a perceived breach of section 32 of the Act on the Landlord's part, they had not notified the Landlord of the breach, given a period to remedy the situation or indicated the tenancy would be ended per section 45(3) of the Act if this did not happen. Whilst it was the Tenants' position that the mice issue had been longstanding and the Tenants are affable and kind people, I find this does not translate to an automatic right to end the tenancy at short notice and in breach section 45 of the Act.

From the above, I find the Tenants ended the tenancy with insufficient notice and in breach of section 45 of the Act. In these circumstances, a landlord may be entitled to recover loss of rent income, but as with all claims for loss, they must do whatever is reasonable to minimize the damage or loss as set out in section 7(2) of the Act. In the context of claims for unpaid rent, this would include re-renting the premises as soon as reasonably possible for a reasonable amount of rent in the circumstances, as set out in Policy Guideline 3 - *Claims for Rent and Damages for Loss of Rent*.

It was the Landlord's evidence that the rental unit was re-advertised on November 1, 2024 for a reduced rate and that whilst no new tenants were found for four months, all that was sought was authorization to retain the rent taken for November, and a monetary award for December's rent as this was the end of the fixed term.

I find the images of the rental unit being re-advertised do not clearly show the rent sought, nor do they show the date the listed was placed. The email between the

Landlord's staff of November 21 at 11:42 AM indicates there are potentially interested parties, and they ask if the $4,700.00 rent is negotiable, and the reply indicates it is not.

Form this, I find there was interest in the rental unit before December 2024 and there was no rent reduction to attract potential tenants. Further, I find that had the rental unit been advertised within a reasonable period from when the Tenants provided notice on October 11, I find rental losses beyond December 1, 2024 would likely not have occurred. Given the rental unit is in a desirable area of Vancouver and, as alluded to by both parties, relatively rare in that it has a significant amount of outdoor space, I find that had reasonable steps to mitigate the losses, only rent for November would foreseeably have been sustained by the Landlord. Because of the timing of the Tenants' notice, I accept that finding a new tenant to start a tenancy from November 1 would have been problematic.

Based on the above, I find the Landlord has established their claim for November's rent and nothing more. Their request to retain the rent taken for this month is granted and the claim for December's rent is dismissed without leave to reapply. The Tenants' claim for the return of November's rent is dismissed without leave to reapply.

Landlord's claim for liquidated damages

It was undisputed that both the first tenancy agreement, which started January 1, 2022 under a fixed term that ran to December 31, 2022 and the second tenancy agreement which had another fixed term set to run from January 1, 2024 to December 31 2024 contained liquidated damages clauses at paragraph 5. The clauses require the Tenants to pay damages of $2,350.00 in a number of scenarios, including if they vacated before the end of the fixed term. The second tenancy agreement was signed on December 20, 2023.

On the face of it, I find the figure referenced in the clause which represents half a month's rent is not unreasonable and is typical for liquidated damages for residential tenancies. It was also undisputed that the Tenants vacated the rental unit before the end of the second fixed term, so the liquidated damages clause is potentially engaged, however, I find there are issues with the inclusion of the clause in the second tenancy agreement.

The fixed term of the first tenancy agreement ended December 31, 2022 and there was a period of approaching a year where the tenancy continued on a month-to-month

basis, per section 44(3) of the Act. The Landlord did not impose a rent increase after the tenancy had been in place for twelve months, as it could have done under section 42 of the Act. Whilst it was undisputed that the second tenancy agreement was put in place, the circumstances that led to this was disputed. The parties provided conflicting testimony on the issue, with each taking the position that the other had instigated the conversation on signing the new agreement. The Landlord also took the position that a rent increase was waived by the Landlord and a lower rent locked in for a year in exchange for the fixed term and inclusion of the liquidated damages clause.

I find insufficient evidence to support the notion the Landlord gave up the opportunity to increase rent. Prior to the signing of the second agreement there was a window of almost a year where the rent could have been increased and it was not, which I find is not indicative of keenness to assert this right. I am not persuaded the Landlord gave up anything to sign the second agreement in this case, and overall, the inclusion of a liquidated damages clause is grossly unfair to the Tenants and unconscionable.

Enforcing such a clause approaching three years after the tenancy started would be oppressive to the Tenants and given such terms are generally penalties for breaking agreement early, would result in unjust enrichment for the Landlord. As set out in section 6(3) of the Act, unconscionable terms in a tenancy agreement are not enforceable. Based on this, I dismiss the Landlord's claim for liquidated damages without leave to reapply.

Landlord's claims for damage to the rental unit

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant. Additionally, section 37(2) of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

For the purposes of a landlord's claim, not only is the condition of the rental unit at the end of the tenancy of relevance, but when it comes to assessing any alleged damage to the rental unit, the condition at the start of the tenancy is also of importance as this allows for the scope and nature of any purported damage during the tenancy to be determined.

A tenant is only responsible for damage caused by them, and not for wear and tear, and it is for the Landlord to prove on a balance of probabilities any damage was caused by the Tenant as a starting point for their claims relating to damage to the rental unit. As set out in section 21 of the Regulation, a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Regarding the claim for painting costs, I find the condition inspection report indicates the rental unit was newly painted at the start of the tenancy. At the end of the tenancy the report records all the walls were recorded as “clean” apart from the entry, halls and stairs which simply says “needs”. From this I find it is unclear why any repainting of the rental unit was needed, let alone how this was connected to a breach of the Act on the part of the Tenants.

Both parties submitted photographic evidence which I accept depicts the rental unit, though there were questions from the Tenants’ side about whether this was the case. From this evidence, whilst I find there are small amounts of scuffs on the walls, I find this is consistent with reasonable wear and tear given the duration of the tenancy, and is not damage for the purposes of sections 32 and 37 of the Act. Given this, I dismiss the Landlord’s claim for painting costs without leave to reapply.

On the claim for replacing the countertop, similarly, I find the end of tenancy condition inspection report records all areas of the kitchen and dining areas, including the countertop as “clean” at the end of the tenancy. I also find the photographic evidence of the parties does not support the notion the countertop was damaged by the Tenants in breach of sections 32 or 37 of the Act. The Landlord’s evidence in particular is of low quality and no stains or damage to the countertop are detectable and only a small area of the surface is seen in the images. The figure of $6,000.00 was also uncorroborated by written evidence such as receipts or invoices.

Based on the above, I find the Landlord has failed to establish the Tenants caused any damage to the countertop in the rental unit, let alone $6,000.00 worth. I dismiss the claim without leave to reapply.

Tenants’ claim for rent abatement

As noted earlier in this section of the Decision, the first step in any claim for compensation under the Act is determining if the applicant has established that the

respondent breached the Act, Regulation, or tenancy agreement. If there is no breach, no compensation is due. I find the issue central to this dispute is whether the Landlord committed a breach based on the presence of mice in the rental unit. Given this, I will determine this issue as a starting point for this claim.

The Tenants provided testimony on the presence of mice in the rental unit which I found to be detailed, consistent and to carry significant weight. The photographic evidence of the Tenants also indicates a significant presence of rodents, particularly behind appliances where faeces is seen. It was also undisputed by the Landlord's Agent that there was an infestation in the rental unit, though issue was taken with the Tenants' efforts in reporting and assisting with the treatment.

From the evidence before me, I find the mouse issue in the rental unit was serious enough to constitute a breach on the part of the Landlord of section 32(1) of the Act which requires a landlord to provide and maintain residential property in a state of decoration and repair that:

- Complies with the health, safety and housing standards required by law; and
- Having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am mindful that the Landlord's responsibility under section 32(1) of the Act may be weighed against the Tenants' obligation to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access set out in section 32(2) of the Act. Whilst it was argued from the Landlord's side that the Tenants were leaving food out and had the patio door open, which exacerbated the rodent issue, I find this does not constitute a breach of the Act, rather it is part and parcel of everyday living which the Tenants should not attract blame for. I also find insufficient evidence to indicate the Tenants breached their obligations by allowing the issue to develop unreasonably before reporting it to the Landlord.

During the hearing, much was said about the steps the Landlord took to address the issue once it was reported to them. It was the Landlord's position that visits from pest control personnel happened frequently in May and June, with eight site visits taking place in addition to an initial assessment. The reports for the visits were not provided, but the Operations Manager provided affirmed testimony on the issue and read from records within their possession. I accept that it is possible SP was selective in their readings, but I find it unlikely that the records they read from were fabricated entirely

and on a balance of probabilities find there were attendances at the rental unit arranged by the Landlord on the dates put forward.

I find the Tenants' evidence indicates the severity of the mice issue was concentrated in May and June, which coincides with the pest control treatment, and that during May in particular catching mice was a daily occurrence. The evidence supports that a mouse was caught in or around the rental unit in early July, then nothing until October 7, when a mouse was caught in the communal area of the residential property near the rental unit.

Whilst the Tenants leant heavily on bylaws which state owners of property should eradicate rodent issues, when it comes to assessing any breach of the Act on the part of a landlord, and any compensation that may be due, I find a more contextual approach is needed. To illustrate this point, I find that whilst a 50% rent reduction for June was reached by the parties, this does not necessarily translate to an automatic reduction of the same amount for other months if just one mouse was cause in or around the rental unit.

As already noted, I find the mice infestation was at its most concentrated in May and June. The Tenants' evidence indicates their hope that a mouse caught in early July was isolated, and there are no further reports beyond this. From this, I find the intensity of the mice issue tapered off and a 50% reduction in rent would not be justified especially for the months from July to October.

Though I was referred to a previous decision issued by the Branch where $13,000.00 in compensation was awarded for among other things, a rat infestation, I must point out that per section 64(2) of the Act I must make each decision on the merits of the case before me and I am not bound to follow other decisions. From a review of the previous decision, I note the affected period in that matter was over two years and there were many other breaches found on the landlord's part outside of pest control issues so there are distinguishing features between the two sets of circumstances.

Overall, I find the mice issue would have foreseeably had a significant impact upon the Tenants and affected quiet enjoyment of the rental unit which is set out in section 28 of the Act, particularly in relation to the noises at night. Whilst it was argued that the Tenant's use of the outdoor area was impacted, I find there was compelling evidence to support the notion the Tenants still used the patio freely at times and were not keeping the door closed at all times, which in any case would not have been a significant breach of section 28 of the Act or utility of the rental unit as a whole.

On balance, I find the Tenants have established a breach of section 32(1) of the Act, that this resulted in a breach of their rights under section 28 of the Act as well. As set out in section 65(1)(f) of the Act, I have authority to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. In these circumstances, I do not find the full amount requested to be justified in this case, particularly for the months July to October as already stated and determine $1,500.00 to be an appropriate figure.

Tenants' claim for increased rent and moving costs

As already noted earlier in this Decision, I find the Tenants were not entitled to end the tenancy at short notice. Further, the mice issues were tapering off significantly by the time the Tenants gave notice on October 11 and the epicentre of the issue had comfortably passed. I find that from July to October two mice were caught around the rental unit. In these circumstances, I do not find the Tenants' increased rent or moving costs were incurred as a result of a breach of the Act on the part of the Landlord. Whilst it was undisputed a mouse was found nearby the rental unit on October 7, and the Tenants were made aware of this through a text message from the building manager, I find this does not give the Tenants a pathway to end the tenancy at short notice, as already explained, or pass on any associated costs to the Landlord.

Aside from the above, I find inconsistencies in the Tenants' position on these claims. On the one hand they acknowledged the tenancy had two more months yet to run and based the amount sought on this, while on the other they took issue with this notion when responding to the Landlord's claims for unpaid rent.

I dismiss the claims for increased rent and moving costs without leave to reapply.

Claims regarding the deposits

Section 38(1) of the Act requires a landlord to either repay the security deposit and if applicable the pet damage deposit to the tenant or make an application for dispute resolution claiming against the deposits within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

The Landlords submitted their Application on November 4, 2024. I find the tenancy ended on October 31 and the Tenant provided their forwarding address in writing to the Landlords on the end of tenancy condition inspection report, also on October 31. Given this, the Landlord has complied within the fifteen-day timeframe set out in section 38(1) of the Act.

Though the Landlord was unsuccessful in its claim, I do not find the claim to be frivolous. Had this been the case, I have discretion to apply the provisions of section 38(6) of the Act and order the return of double the security deposit to the Tenants. I do not find it appropriate to do so in this case. I also find elements of the Landlord's claim is foreseeably linked to allegations of pet damage. As such, I find the doubling provisions of section 38(6) of the Act do not apply to either deposit, nor did the Tenants allege this should happen.

I also find the Tenants have not extinguished their right to the return of the deposits under either sections 24(1) or 36(1) of the Act. Therefore, as the Landlord has no grounds to retain the deposits, I order they be returned to the Tenants with interest. I am treating the partial payment of $257.76 by cheque as unreturned. I find on a balance of probabilities this was not cashed.

Per section 4 of the Regulation, interest on deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the deposits was calculated as $249.20 using the Branch interest calculator using today's date

Filing fees

In these circumstances I find neither party is entitled to recover the filing fee from the other. I dismiss both the Landlord's and the Tenants' claims under section 72(1) of the Act without leave to reapply.

Conclusion

The Landlord's Application is dismissed without leave to reapply, save for their request to retain rent for November 2024.

The Tenants' application is granted in part and they are issued a Monetary Order accordingly. A copy of the Monetary Order is attached to this Decision and must be

served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Rent abatement	$1,500.00
Return of deposits, plus interest	$4,949.20
Total	**$6,449.20**

The Landlord is aware of the issues put forward by the Tenants regarding cashing cheques made out in both of their names and should consider this when fulfilling the terms the Monetary Order.

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: August 8, 2025

Residential Tenancy Branch