# DECISION

## Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlords and the Tenants under the *Residential Tenancy Act* (the Act). The Landlords' Application for Dispute Resolution, filed on July 11, 2025 (the Application), is for:

- A Monetary Order for damage to the rental unit or common areas under sections 37 and 67 of the Act
- Authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Authorization to recover the filing fee for the Application from the Tenants under section 72 of the Act

The Tenants' Application for Dispute Resolution, filed on July 24, 2025 (the Cross Application), is for:

- A Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- Authorization to recover the filing fee for the Cross Application from the Landlords under section 72 of the Act

## Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Tenant R.C. (the Tenant) testified that the Landlords never served them with the Proceeding Package for the Application. The Tenant states they received a courtesy copy of the Proceeding Package from the Residential Tenancy Branch (RTB) after the Tenants filed the Cross Application. Agent for the Landlord, D.M. (the Landlord) acknowledged the Proceeding Package was not served to Tenants in accordance with the Act or the RTB Rules of Procedure, stating this was due to an office or administrative error on their part.

Based on the submissions and evidence before me, I find that the Tenants were not duly served with the Proceeding Package for the Application in accordance with the Act. However, based on the Tenants' receipt of the Notice of Dispute Resolution Proceeding from the RTB and their attendance at the hearing, I find they were sufficiently served under section 71(2)(c) of the Act.

The Tenants submitted a Proof of Service form (#RTB-55) stating the Proceeding Package for the Cross Application was sent to the Landlords' Agent at their pre-agreed email address for service on July 25, 2025. The Landlord acknowledged receiving the Proceeding Package for the Cross Application from the Tenants and raised no concerns regarding service. I therefore find that the Proceeding Package for the Cross Application was duly served to the Landlords in accordance with section 43(2) of the *Residential Tenancy Regulation* (the Regulation).

## Service of Evidence

The Tenant acknowledged receiving an email from the Landlord on September 10, 2025, attaching an invoice dated September 9, which the Landlord submitted into evidence. The Tenant testified no other evidence was received from the Landlords prior to the hearing.

The Landlord testified that the remainder of the Landlords' evidence was sent to the Tenants by email on September 22, 2025, the day of the hearing. The Landlords submitted a Proof of Service form (#RTB-55) attaching a copy of the outgoing email to confirm this service. The outgoing email shows it was sent to the Tenants at 10:56 AM. The hearing was scheduled for 11:00 AM.

RTB Rule of Procedure 3.14 requires that any evidence not submitted by an applicant at the time the Application for Dispute Resolution is filed must be received by the RTB and the respondent at least 14 days before the hearing. Therefore, I find that the Tenants were not duly served with the Landlords' evidence in accordance with the Act, the Regulations, or the Rules of Procedure. As the Tenant confirmed they had time to review the invoice dated September 9, 2025 prior to the hearing, I find this evidence was sufficiently served to the Tenants under section 71(2)(c) of the Act and is therefore admissible. I decline to admit the remainder of the Landlords' evidence due to lack of service because it was not sent to the Tenants until four minutes before the hearing.

The Landlord acknowledged receiving the Tenants' evidence with the Proceeding Package for the Cross Application and confirmed he had time to review the documents. Based on the submissions before me, I find the Tenants' evidence was duly served to the Landlords in accordance with section 43(1) of the Regulation and is therefore admissible.

## Amended Issues to be Decided

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

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

Is either party entitled to recover the filing fee for the Application or the Cross Application from the other?

## Background and Evidence

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

The parties agree this periodic tenancy began on April 1, 2024, with a monthly rent of $3,000.00, due on the first day of the month. The Tenants paid a security deposit of $1,500.00 on March 19, which is held in trust by the Landlord. The tenancy ended on June 30, 2025.

It is undisputed that the parties completed a move-in inspection at the start of the tenancy and a move-out inspection on June 26, 2025. A Condition Inspection Report (CIR) was completed and signed by both parties after the move-in and move-out inspections. The Tenants have submitted a copy of the CIR into evidence.

The CIR indicates the countertop in the main ensuite bathroom was in good condition at the start of the tenancy, but that it was in “poor” condition and stained when the move-out CIR was completed. The third page of the CIR indicates the Tenants are responsible for damage to the rental unit regarding the surface of the ensuite countertop, and that the Tenants agreed the CIR fairly represents the condition of the rental unit. The CIR is signed by the Landlord and one of the Tenants.

The Tenant acknowledged there were some marks on the countertop at the end of the tenancy, which the Tenants say constitute regular wear and tear from hardwater buildup staining the countertop. The Tenant testified they did not intentionally or negligently damage the countertop. The Tenant confirmed that, during the move-out inspection, they agreed to do what they could to get rid of the marks on the countertop prior to their scheduled move-out date of June 30, 2025.

It is undisputed that the Tenants hired a contractor to refinish the countertop after the move-out inspection. The Tenants’ evidence includes an invoice from the contractor they hired, showing they were invoiced $393.75 for this work, and that they paid $400.00 cash on June 28, 2025. The Tenants’ position is that paying for this work to be done went above and beyond their obligations to leave the rental unit in good condition.

The Landlord testified that the work done by the Tenants’ contractor was of poor quality and not properly completed. The Landlord states he first noticed this on June 30, 2025, when he ran his hand over the countertop and found it was rough to the touch. The Landlord states there were also etched overlapping rings on the countertop that still required to repair. It is undisputed that the Landlord then emailed the Tenants on July 11, stating the countertop damage and rough spray paint fix by their contractor needed to be rectified by a professional surface repair company.

The Tenant testified that the photographs the Landlord sent to them on July 11, 2025 do not accurately reflect how the countertop looked when they moved out of the rental unit.

The Tenants' evidence includes photographs of the countertop that are date-stamped June 30, 2025.

The Landlord testified that the rental property was built in 2017, so the countertops were no more than 8 years old at the end of the tenancy. The Landlord is seeking compensation of $1,338.75. The Landlord's evidence includes an invoice dated September 9, 2025, stating the Landlord was invoiced $1,338.75 by the professional surface repair company to remove etching and dully painted area from the countertop and finish the countertop with a protectant sealer.

## 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.

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

**Are the Landlords entitled to a Monetary Order for damage to the rental unit?**

In an application for compensation for damage or loss, the party making the claim bears the burden of proof. This means that the party claiming the damage or loss must establish that:

- The other party failed to comply with the Act, regulation, or tenancy agreement
- Loss or damage resulted from the failure to comply
- The amount of or value of the damage or loss
- The party making the claim acted reasonably to minimize their damage or loss

Section 37(2)(a) 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.

Policy Guideline #1 states a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or their guest. This Policy Guideline further explains that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

I find that the only deliberate action or negligence alleged by the Landlord is that the Tenants hired a contractor to repair and refinish the countertop after the Landlord identified this as an issue in the CIR after the move-out inspection. The Tenant testified that they used the countertops in a reasonable manner during the tenancy and I am not

satisfied that the Landlord has provided any evidence or testimony to dispute this assertion. Therefore, I accept the Tenants' testimony that no damage was caused to the ensuite countertop by their negligence or deliberate actions.

To the extent that the contractor hired by the Tenants can be considered a "guest" of the Tenants, for the reasons that follow, I am still not satisfied that the Landlord has established that loss or damage resulted from this contractor's work.

I find that the Tenant's testimony that the countertop was in good condition at the end of the tenancy is corroborated both by the fact that they paid $400.00 to have the countertops repaired and refinished, and by the photographs submitted into evidence by the Tenants, taken on the last day of the tenancy.

While the Landlord testified that he noticed the rough texture of the countertop and realized it still needed to be refinished on June 30, 2025, the delay of 11 days in notifying the Tenants of this and sending them photographs is insufficient to discredit the Tenant's testimony and the evidence they have submitted.

Therefore, I find that the Landlords, as the party making the claim, have failed to provide evidence over and above their testimony to prove that the Tenants caused damage to the countertop that necessitated the $1,338.75 surface repair.

Based on the testimony of the parties and the evidence before me, I find that the Landlords have failed to establish that the Tenants did not leave the rental unit reasonably undamaged except for reasonable wear and tear. Instead, I find that any repairs to the ensuite countertop done after the Tenants moved out were required due to reasonable wear and tear.

As a result, I dismiss the Landlords' claim for a Monetary Order for damage to the rental unit under sections 37 and 67 of the Act, without leave to reapply.

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

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

The parties agree this tenancy ended on June 30, 2025. As the Landlord filed the Application on July 11, I find that the Landlord made their application within the required 15 days, despite their failure to serve the Application to the Tenants in accordance with the Act. Therefore, I am satisfied the Landlords complied with section 38 of the Act.

However, as I have dismissed the Landlords' Application for damage to the rental unit under sections 37 and 67 of the Act, the Tenants are entitled to a Monetary Order for the return of their security deposit, plus interest, under section 38 of the Act.

**Is either party entitled to recover the filing fee for the Application or the Cross Application from the other?**

As the Tenants were successful, I grant their request to recover the $100.00 filing fee paid for the Cross Application from the Landlord under section 72 of the Act. The Landlords' request to recover the filing fee for the Application is dismissed, without leave to reapply.

## Conclusion

I grant the Tenants a Monetary Order in the amount of **$1,642.47** under the following terms:

| Monetary Issue | Granted Amount |
|---|---|
| A Monetary Order for the return of the Tenants' security deposit under sections 38 and 67 of the Act | $1,500.00 |
| Amount of interest owed on security deposit from March 19, 2024 to the date of this Order | $42.47 |
| Authorization to recover the filing fee for the Cross Application from the Landlord under section 72 of the Act | $100.00 |
| **Total Amount** | **$1,642.47** |

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: September 24, 2025

Residential Tenancy Branch