



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDCT, FFT / MNDCL-S, LRSD, FFL

Introduction

The hearing was convened following Applications for Dispute Resolution (the Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants request the following:

- Compensation for damage or loss under the Act, the *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act; and
- To recover the filing fee for their Application from the Landlords under section 72 of the Act.

The Landlords request the following:

- Compensation for damage or loss under the Act, 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.

Parties attended the hearing for both the Landlords and the Tenants. Words using the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding and Evidence

The parties confirmed receipt of the Notice of Dispute Resolution Proceeding Packages for the other's Applications. The Landlords' Agent acknowledged receipt of the Tenants' evidence. The Tenants confirmed receipt of the evidence submitted with the Landlords' Application. No issues with service were raised. Given this, I find that these records were served as required under sections 88 and 89 of the Act.

The Landlords provided additional evidence in support of their Application to the Tenants via email. The Tenants provided email addresses for service. The Tenants acknowledged receipt of the Landlords' email with further evidence attached on October 11, 2025, but stated they could not access the files, which were provided in two PDFs. They did not raise the issue with the Landlords.

The Landlords provided a record of the email correspondence to the Tenants attaching the PDF files, which I find show they are recognised as compatible with Adobe PDF Reader. From this, I find the Landlords' additional evidence was served as required under section 88 of the Act and was readily available for the Tenants to view.

I cannot explain the Tenants' inability to view the additional evidence, but it appears to be outside of the control of the Landlords. The Tenants appeared able to review other files sent to them by the Landlord in the same format. The Tenants had ample opportunity to raise the issue, or attempt to view the files on another device but did not appear to take this opportunity. Based on this, I admitted the Landlords' evidence to consideration and found it would be prejudicial to the Landlords to exclude it. I also found adjournment would not be necessary or proportionate in this case.

Preliminary Issue – Request for Amendment

At the hearing, the Landlords' Agent sought to amend the claim to include loss of rent for September 2025. No amendments were submitted by the Landlords ahead of the hearing in accordance with Rule 4 of the *Rules of Procedure* (the Rules). The Landlords' Application, as it was submitted, outlines a claim to retain the rent paid by the Tenants for August 2025 only.

The Tenants opposed the request for amendment, indicating they were not aware that this issue would be brought up at the hearing.

Rule 7.12 states that an application can be amended at a hearing only in certain circumstances which are:

- When the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the application was made; or
- Where the applicant requests an amendment to their application and the respondent consents to the amendment.

Considering the above, I declined the request to amend the Landlords' Application. The Tenants clearly did not consent to the amendment. I also find that the amendment could not have been reasonably anticipated. Had the Landlords wished to seek further compensation beyond August 2025 in the event they were unable to re-rent the rental unit, there was more than adequate opportunity to amend the Application ahead of the hearing under Rule 4.

I do not find it could have been reasonably anticipated that further months of rental income beyond August 2025 would come into question without input from the Landlords. This is not a claim regarding an ongoing tenancy where it would have been known to the Tenants that further rent had become due while waiting for the hearing.

Issues to be Decided

- Are either party entitled to the requested compensation?
- Are the Landlords entitled to retain the Tenants' security deposit and pet damage deposit? If not, are the Tenants entitled to their return?
- Are either party entitled to recover the filing fees for their Applications?

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.

On July 30, 2025, the parties signed a written tenancy agreement providing for a tenancy beginning on August 1, 2025 for a fixed term ending on July 31, 2026 and was set to continue on a month-to-month basis after that. Rent was \$3,495.00 per month due on the first day of the month. A security deposit and a pet damage deposit of

\$1,747.50 each were paid by the Tenants on July 31, 2025, which the Landlords still hold.

A start of tenancy inspection was completed on August 1, and the Tenants were given the keys to the rental unit. The Tenants also participated in the end of tenancy inspection on August 25, and gave their forwarding address in writing to the Landlord on August 8, by email, which the Landlords' Agent acknowledged receiving on or around the same day it was sent.

The parties disagreed as to whether the Tenants ever occupied the rental unit. The Tenants affirmed they never resided at the rental unit, while the Landlord's Agent took the position that the Tenants occupied the rental unit until August 25, when the end of tenancy inspection was completed and the keys were returned.

The Tenants' claims

A start of tenancy inspection took place on August 1, 2025 and one of the Tenants signed the report, though it was argued the inspection itself was not thorough, so things were missed. The carpets had not been professionally cleaned despite the Tenants requesting assurances that this would be done because they suffered with asthma and allergies.

The Tenants testified that on August 2 they discovered the carpets were left dirty, and with a possible pest infestation. They left a voicemail message for the Landlords, and spoke with their Agent the following day about the issue. During the conversation, they indicated the rental unit was uninhabitable from their perspective, requested the carpets be cleaned within 48 hours, and suggested a mutual end to the tenancy may be beneficial to both parties, which the Landlords were not amenable to.

The Tenants take the position that the property was not move-in ready and that the poor condition of the carpets and the leftover pieces of furniture in the rental unit, namely, a couch and a desk, constituted a breach of a material term of the tenancy agreement by the Landlords. Given this, they felt they had no choice but to end the tenancy.

The Tenants affirmed that they took photographs of the carpets and baseboards, which they sent to a pest control expert, who told them via text message that daily vacuuming of the carpet was needed for two weeks to resolve the issue. The pest control expert did not inspect the rental unit themselves. The Tenants provided the photographs as

evidence, but no records of the text message exchange with the pest control experts were provided.

The Tenants seek the return of the rent they paid for August 2025 and their deposits, as well as compensation for storage and moving fees, and temporary accommodation costs. The Tenants provided an invoice for use of a storage container from August 5 to 31 as evidence.

The Tenants' claims are summarized as follows:

Item	Amount
U-Haul	\$845.89
Storage container	\$391.28
Temporary accommodation	\$2,400.00
Return of August's rent	\$3,495.00
Return of deposits	\$3,495.00
Total	\$10,627.17

The Landlords' Agent outlined that from their perspective, the move-in inspection went successfully, and the report was signed off by both parties. It was argued that professional cleaners spent 6 hours cleaning the rental unit, and an invoice supplied as evidence supported this.

Whilst it was acknowledged that the carpets were not professionally cleaned, the Landlords' Agent affirmed that the Landlords had cleaned them themselves, having lived in the rental unit before the tenancy began. The Landlords gave their approval for the carpets to be professionally cleaned after the Tenants requested, and an invoice dated August 11 was provided as evidence.

The Landlords' Agent affirmed there were no issues with bugs noted during the Landlords' occupancy of the rental unit, though when the Tenants raised the issue, it was arranged for a pest control expert to attend, who found no active problems. A pest control invoice was submitted as evidence by the Landlords.

It was acknowledged that a couch and a desk were left in the rental unit, as outlined in the online advertisement, a copy of which was provided and details "1 sofa & wooden desk downstairs".

The Landlords' claims

It was argued that as the Tenants were given access to the rental unit on August 1 after successfully completing the start of tenancy inspection, that the Landlords were entitled to retain the rent paid for the month.

The Landlords also seek to rely on the term at paragraph 6 of the addendum to the tenancy agreement and claim liquidated damages of \$2,621.25. The term reads as follows:

Ending the Tenancy – While in a fixed term lease - Lease Severance and Breaching Tenancy Agreement

A breach happens when the tenancy agreement is terminated by the tenant OR the landlord for any reason prior to the agreed length of stay (see page 2 of tenancy agreement for length of tenancy). This is inclusive but not limited to: the landlord terminating the tenancy for cause, and the tenant giving notice to move out before the fixed term tenancy ends. The tenant understands that they are liable to pay all financial losses awarded to the owner of the property including but not limited to: tenancy rental ledger arrears, lost rents during vacancy after you have moved out, liquidated damages to find a new tenant which is equivalent to 75% month's rent, monthly rental losses if a new tenancy agreement is signed by a new tenant for a lesser amount, and any additional costs to re-rent the property. (repairs / cleaning etc.)

The emphasis is reproduced as it is written in the tenancy agreement.

The Tenants argued they should not be responsible for August's rent as they did not physically reside in the rental unit and given the state of the carpets, they should not be expected to forfeit rent for the month. The Tenants reiterated they felt like they had no other option but to end the tenancy early.

Analysis

Rule 6.6 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.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove their claim, an applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Are either party entitled to the requested compensation?

I find both parties' claims stem from one central issue, which is the condition of the rental unit at the start of this tenancy. The Tenants take the position that the Landlords breached a material term of the tenancy agreement by failing to have the carpets professionally cleaned, and by leaving behind two pieces of furniture behind, and that overall, the rental unit was not in a livable condition, which left them no choice but to end the tenancy. Whilst it was acknowledged from the Landlords' side that the carpets were not professionally cleaned, the notion there was any material breach on their part or that the rental unit was uninhabitable was disputed.

The parties had conflicting positions of the condition of the rental unit when the tenancy began. 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.

From a review of the start of tenancy condition inspection report - which one of the Tenants signed in agreement – I note scuffs and scratches of various elements of the property are recorded, and discolouration of the hallway carpet appears to be recorded, but there are no apparent mentions of bug infestations or any other issue with the carpets.

The Tenants provided photographs, which they affirmed were taken on August 1, which appear to show hair, grime and dead spiders and insects, but I find the images are taken from a close perspective and show minimal areas of the carpet itself.

Though the Tenants alleged a pest control expert indicated two weeks of vacuuming was needed in the rental unit, this assertion was unsupported by corroborating evidence. The Tenants' evidence also indicated that the pest control expert had not seen the rental unit first-hand, and made their purported assessment based on images sent to them by the Tenant. The Landlord provided written evidence from the pest control expert they hired which indicates there were no live bugs at the rental unit and an accompanying invoice for their services was provided as evidence. In these circumstances, I give the Landlords' evidence more weight on this issue.

From the above, I am not satisfied that the rental unit was in an uninhabitable condition, as alleged by the Tenants. I am also not satisfied that the Tenants have proven the Landlords breached a material term of the tenancy agreement. I found insufficient evidence to support the notion the professional cleaning of the carpets before the tenancy or removal of the couch and desk were material terms of this tenancy agreement.

A material term is at the heart of an agreement and non-compliance by a party significantly diminishes the value or benefit of the agreement for the other party. Even the most trivial breach of a material term gives the other party the right to end the agreement.

Policy Guideline 8 - *Unconscionable and Material Terms* states that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

Policy Guideline 8 also provides that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- That there is a problem;
- That they believe the problem is a breach of a material term of the tenancy agreement;
- That the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- That if the problem is not fixed by the deadline, the party will end the tenancy.

Even if the Tenants had established the two aforementioned terms were material, it was undisputed that the Tenants had not provided written notice regarding the issues with a reasonable timeframe to correct it as outlined above. This is a requirement a tenant must meet before they can end a tenancy under section 45(3) of the Act.

Outside of the material breach allegations, I am also considering the Landlords' obligations to repair and maintain the rental unit in the context of the Tenants' claim. Section 32(1) of the Act sets out that a landlord must 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.

Whilst I find the evidence indicates at least some level of dust and grime was present on some areas of the carpets and baseboards at the start of the tenancy, the issue does not appear to be significant or widespread enough to equate to a repudiatory breach from the Landlords i.e. a breach so significant that the Tenants would be justified in terminating the contract, nor does it appear the contract was approaching the high threshold of being ended due to frustration.

Based on the above, I find the Tenants ended the tenancy in breach of the fixed term and had no valid reason under the Act to end the tenancy before the fixed term had been reached.

The Tenants were also obliged to pay rent when it was due on August 1, 2025. Section 26 of the Act states that a tenant must pay rent when it is due under a tenancy agreement, whether or not the landlord complies with the Act, the Regulation, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Neither party put forward evidence to indicate that any of the circumstances where rent may be withheld are applicable, nor are any apparent to me.

Though the parties disputed whether the Tenants occupied the rental unit, this is of no significance as section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the above, I dismiss the Tenants' claim for the return of August's rent and authorize the Landlords to keep it.

As already noted, I find insufficient evidence to indicate the rental unit was uninhabitable as alleged by the Tenants. I find the Tenants have failed to establish the storage and temporary accommodation costs were incurred due to a breach on the Landlords' part. Aside from the Tenants' failure to establish a basis for these three claims, the U-Haul fees and temporary accommodation costs were unsupported by written evidence. I dismiss these claims without leave to reapply.

The Landlords seek to enforce a liquidated damages clause set out in the addendum and recover \$2,621.25 from the Tenants for ending the tenancy before the fixed term.

As set out in Policy Guideline 4 - *Liquidated Damages*, A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

Further, Policy Guideline 4 states that if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Based on the evidence before me, I find the tenancy agreement contains a clearly worded and fully enforceable liquidated damages clause. I find the amount of damages of three quarters of a month's rent to be a reasonable amount, is not excessive or a penalty, and appears to be a genuine attempt to estimate the costs of re-renting the rental unit in the event the Tenants end the tenancy before the fixed term is reached.

As I find the Tenants breached the fixed term and ended the tenancy before July 31, 2026, I find the Landlords have established their claim to recover the liquidated damages from the Tenants, per the tenancy agreement, and I therefore grant the Landlords' claim in full. The Landlords are issued a payment order for \$2,621.25 accordingly.

Are the Landlords entitled to retain the Tenants' security deposit and pet damage deposit? If not, are the Tenants entitled to their return?

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

It was undisputed that the Tenants provided their forwarding address to the Landlords on August 8, 2025. The Landlords submitted their Application on August 20. Given this, the Landlords have applied within the fifteen-day timeframe set out in section 38(1) of the Act. I find neither party extinguished their right to claim against the deposits under sections 24 or 36 of the Act. Given this, the doubling provisions of section 38(6) of the Act does not apply here.

As I have made a payment order in favour of the Landlords, as outlined previously in this Decision, I authorize the Landlords to retain \$2,621.25 from the Tenants' security deposit and pet damage deposit, plus interest, in full satisfaction of the payment order under section 72(2)(b) of the Act.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the deposits was calculated as \$8.28 using the Residential Tenancy Branch interest calculator using today's date, meaning the Landlords hold a total of \$3,503.28 in terms of deposits.

Are either party entitled to recover the filing fees for their Applications?

As the Tenants were unsuccessful in their claims, they must bear the cost of the filing fee for their Application.

As the Landlords were successful in their claims, I grant their request under section 72(1) of the Act to recover the filing fee from the Tenants. The Landlords may retain a further \$100.00 from the Tenants' deposits.

Summary

The Landlords are authorized to retain \$2,721.25 from the Tenants' deposits in satisfaction of the payment orders regarding the claims for liquidated damages and recovery of the filing fee. The Landlords therefore hold a remainder of \$782.03 (\$3,503.28 - \$2,721.25). Since the Tenants have not extinguished their rights regarding the deposits, I order the Landlords to return this amount to the Tenants, and I issue them a Monetary Order accordingly.

Conclusion

The Tenants' monetary claims are dismissed without leave to reapply. The Landlords' claim for liquidated damages is granted. The Landlords are authorized to retain the rent paid by the Tenants for August 2025, and to retain \$2,721.25 from the Tenants' deposits. The Landlords are ordered to return the remainder (\$782.03) to the Tenants.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlords. It is the Tenants' obligation to serve the Monetary Order on the Landlords. The Monetary Order is enforceable 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: October 29, 2025

Residential Tenancy Branch