



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

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

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 Landlord seeks:

- Compensation for unpaid rent under section 67 of the Act;
- Compensation for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- To retain the Tenants' security deposit under section 38 of the Act; and
- To recover the filing fee for its Application under section 72 of the Act.

The Tenants seek:

- Compensation for loss under the Act, Regulation, or tenancy agreement under section 67 of the Act;
- The return of their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application under section 72 of the Act.

Parties attended the hearing for both the Landlord 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 Package for both Applications and the other's evidence. 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.

Preliminary Issue – Claims to be Determined

A previous hearing involving the parties took place on August 13, 2025, which dealt with applications from each side. The arbitrator dealing with the previous disputes provided their decision on August 14 (the August Decision). The file numbers for the previous applications are included on the front page of this Decision for reference.

In the August Decision, the arbitrator dealt with claims for compensation from the Tenants relating to the presence of insects in the rental unit, a high-pitched noise, a gas leak, dishwasher repairs, and parking. As outlined by the arbitrator under the first preliminary matter in the August Decision, the issue relating to people accessing the patio of the rental unit without notice was not addressed as it was not particularised in the Tenants' previous application.

Under the Tenants' Application before me, they seek compensation relating to all of the above-mentioned issue, along with what appeared to relate to unresolved electrical issues and dealings with the Landlord's property managers.

I find I am unable to determine or re-decide the issues already dealt with in the August Decision under the doctrine of *res judicata* – a matter already decided upon – and I therefore decline to hear them. As such, only the Tenants' claims relating to access to the patio, electrical issues, and dealing with the Landlord's staff will be addressed in this Decision.

Issues to be Decided

- Are either party entitled to the requested compensation?
- Can the Landlord retain the Tenants' security deposit, or are the Tenants entitled to its return?
- Are either party entitled to recover the filing fee 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.

Evidence was provided indicating the following regarding the tenancy:

- The tenancy began on June 1, 2025 for a fixed term ending June 30, 2027 and was set to continue on a month-to-month basis after that.
- Rent was \$3,325.00 per month due on the first day of the month.
- A security deposit of \$1,662.50 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement.
- The Tenants vacated the rental unit on August 5, 2025.
- The Tenants have not provided their forwarding address in writing to the Landlord.

The Landlord's claims

As set out in the Incentive Addendum to the tenancy agreement, the Tenants were given free rent for the period June 1 to 15, 2025 and \$250.00 off monthly rent from July 2025 to June 2026. The Incentive Addendum also states:

Without prejudice to any other remedies available to the Landlord, if the Tenant ends the fixed term Tenancy prior to the end of the fixed term, or is in breach of the Residential Tenancy Act, or a material term of the Tenancy Agreement that causes the Landlord to end the Tenancy prior to the end of the fixed term, the Tenant will pay back all incentives and or discounts provided to the Tenant in addition to any other amounts owed by the Tenant.

The Landlord takes the position that the Tenants withheld rent for August 2025, a 10 Day Notice to End Tenancy for Unpaid Rent was issued, then the Tenants vacated the rental unit on August 5 before the end of the fixed term. On this basis, the Landlord seeks to recover the incentives given to the Tenants, which total \$1,912.50. The Landlord received a Monetary Order for August's rent under the August Decision.

The Landlord also seeks to recover liquidated damages under paragraph 4 of the addendum to the tenancy agreement which reads as follows:

Without prejudice to any other remedies available to the Landlord, if the Tenant ends the tenancy prior to the end of the term of the Tenancy Agreement

or is in breach of the Residential Tenancy Act or a material term of the Tenancy Agreement that causes the Landlord to end the tenancy prior to the end of the term of the Tenancy Agreement, the Tenant will pay to the Landlord the sum of \$1,662.50 as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the Tenant to the Landlord. The Tenant will also be responsible for any rent remaining due during the remainder of the term of the Tenancy Agreement, until the Premises are re-rented. Landlord will take all reasonable steps to ensure the Premises are re-rented as soon as possible to mitigate any damages for breach of the Tenancy Agreement by the Tenant.

The Landlord's Agent affirmed that there were advertising costs associated with finding a new tenant and provided copies of invoices as evidence.

The Tenants' response to the Landlord's claims

The presence of the Incentive Addendum and liquidated damages clause was not disputed by the Tenants, though they took the position that these terms were agreed upon based on the Landlord providing the rental unit in a safe living condition. It was argued that the Landlord breached their obligation in this regard as demonstrated by the gas leak and delayed repairs that were dealt with in the August Decision.

The Tenants' claims

On July 30, 2025, a person came onto the ground level patio of the rental unit without notice, then began cleaning and moving the Tenants' personal items. A property manager then began to bang on the door of the rental unit, and appeared to indicate to the Tenants the person should not be on the patio. The Tenants affirmed the person was on the patio for between two and three hours. The Tenants disputed seeing any signs or notices in communal areas about the access.

The Tenants affirmed that the light in the washroom of the rental unit flickered. This was reported to the property manager by text message, then via the Landlord's online portal on July 30, 2025. The matter was unresolved by the time the Tenants vacated the rental unit on August 5.

The Tenants also took issue having to deal with multiple property managers throughout the tenancy and not being sure who to ask about issues.

Based on the above, the Tenants seek compensation of \$3,325.00, the equivalent of one month's rent.

The Landlord's response to the Tenants' claims

The Landlord's Agent questioned whether the timeframe regarding the cleaning was accurate, though acknowledged that a third party instructed by the Landlord had entered the patio of the rental unit without notice to the Tenants directly. They affirmed notices had been posted in communal areas around the residential property. It was also acknowledged that the patio was for the Tenants to occupy exclusively under the tenancy agreement, though it was deemed common strata property.

The Landlord's Agent affirmed they had no records of the flickering light being reported by the Tenants via text message, only through the online portal on July 30, 2025 and that the issue was remedied on August 6.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* 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.

Are either party entitled to the requested compensation?

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 claims, the 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 breach 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.

I will address the claims listed in both Applications in turn.

Landlord's claims for recovery of rent incentives - \$1,912.50

From a review of the terms of the Incentive Addendum, I find it is clear that the incentives provided to the Tenants, namely, free rent for the first half of June 2025 and a \$250.00 per month discount in rent from July 2025, were given under the condition that the tenancy was to last for at least 24 months. I find the terms also clearly outline that if the Tenants cause the tenancy to end and breach the fixed term, the incentives must be paid back to the Landlord.

Though the Tenants took the position they were entitled to end the tenancy based on the condition of the rental unit, I find insufficient evidence to support this argument. As already noted in the August Decision, the arbitrator found the evidence before them does not establish the tenancy ended under section 45(3) of the Act before August 1, 2025.

I also find insufficient evidence to indicate the Tenants were entitled to end the tenancy before the fixed term was reached without breaching the terms of the agreement and without penalty.

Fixed-term tenancies can be ended by a tenant before the end of the term is reached, and without penalty to a tenant, but only in certain circumstances. Whilst one of these circumstances is if the landlord has breached a material term of the tenancy agreement, in this context the tenant is still required to give written notice of the landlord's failure to comply with the material term in question and provide a reasonable period to correct the situation, as set out in section 45(3) of the Act. If this is done, and the landlord does not correct the issue, the tenant may end the tenancy on a date that is after the date the landlord received notification of the issue.

From the evidence before me, I find the criteria set out in section 45(3) of the Act were not met when the Tenants vacated the rental unit on August 5, 2025. Nothing before me indicated the Tenants provided written notice of a material breach on the Landlord's part had taken place, and that they would end the tenancy if it was not remedied. I also find insufficient evidence to indicate any of the other ways a fixed term tenancy may be

ended without penalty to the Tenants took place, such as through mutual agreement, or under section 45.1 of the Act.

Based on the above, I find the Tenants ended the tenancy in breach of the fixed term and Landlord is entitled to recover the incentives given in June and July 2025 totalling \$1,912.50. I have also considered if the terms in the Incentive Addendum are not enforceable under section 6 of the Act and do not find this is the case here. I find the terms are clear, and there is nothing inherently wrong or inconsistent with the Act for a landlord to offer incentives for abiding by the fixed term of a tenancy agreement. I therefore grant the Landlord's claim in full.

Landlord's claim for liquidated damages - \$1,662.50

The Landlord seeks to enforce a liquidated damages clause at paragraph 4 of the addendum to the tenancy agreement.

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, the Policy Guideline 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 and the testimony of both parties, I find the tenancy agreement contains a clearly worded and fully enforceable liquidated damages clause. I find the amount of damages of \$1,662.50, representing half a month's rent, to be a reasonable amount and is not excessive or a penalty. I find it is entirely foreseeable that the Landlord would incur costs through advertising the rental unit and administration costs through showing the rental unit and reviewing applications of prospective tenants that they were not reasonably expecting to incur so soon, given the fixed term was set to run until the end of June 2027.

As noted above, I find the Tenants ended the tenancy in breach of the fixed term. Given the above, I find the Landlord has established their claim to recover the liquidated damages from the Tenants and I therefore grant the Landlord's claim in full.

Tenants' claims - \$3,325.00

Section 29 of the Act sets out a landlord's rights regarding entry and access and states that a landlord must not enter a rental unit unless the tenant gives permission at the time of entry or within 30 days before the entry, or the landlord has provided written notice.

Under section 1 of the Act, a "rental unit" means living accommodation rented or intended to be rented to a tenant and "common area" is defined as any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants.

Since it was undisputed that the patio of the rental unit is the Tenants' to exclusively occupy, I find this area is classed as part of the rental unit and the Landlord is required to comply with section 29 of the Act in order to enter. Whether or not the patio is classed as "common property" under the *Strata Property Act* is of no relevance here as this does not override the provisions of section 29 of the Act in the context of a residential tenancy to which the Act applies.

It was undisputed that the Tenants had not been provided with notice directly regarding the access of the cleaning personnel. Though the Landlord's Agent affirmed notice had been posted in communal areas of the residential property, I found this to be vague. The precise location of the purported notice was not provided, nor was there a copy of the alleged notice submitted as evidence either.

Overall, I am not satisfied the Tenants received notice of entry provided to them in accordance with section 88 of the Act. Nothing before me indicates the Tenants otherwise got the notice that would allow me to consider an order under section 71(2)(c) of the Act that notice was nevertheless adequately given for the purposes of the Act.

From the above I find the Tenants have established the Landlord breached section 29 of the Act and an agent of theirs entered the rental unit without notice or permission. I found the Tenants' testimony on the nature and scope of the access to be more detailed and consistent, and overall to be more compelling than that of the Landlord's Agent.

The effects of the breach on the Tenants do not appear to be serious or long-lasting, though I accept at the time it would foreseeably result in diminishment of the Tenants' right to reasonably privacy set out in section 28(a) of the Act. The Tenants appeared to

have notified the Landlord of the issue, though it persisted. Overall, find compensation of \$300.00 for this breach is justified in this case.

I find the Tenants have failed to establish compensation is due for the other two elements of their claim.

Whilst a landlord's obligation to repair and maintain the residential property as set out in section 32 of the Act would encompass faulty electricals, I am not satisfied the Tenants established they notified the Landlord of the issue before July 30, 2025. Accepting the Tenants vacated on August 5 and the matter was repaired by August 6, I find no compensation is warranted here and I dismiss this claim without leave to reapply.

Though the Tenants took issue with the number of property managers or agents employed by the Landlord, I find this does not translate to a breach of the Act, Regulation or tenancy agreement on the Landlord's part. I dismiss the claim without leave to reapply.

Can the Landlord retain the Tenants' security deposit, or are the Tenants entitled to its return?

I find the Tenants had not provided their forwarding address in writing to the Landlord when the Application was made. Therefore, the fifteen day period set out in section 38(1) of the Act whereby the Landlord would have to either return the security deposit and pet damage deposit to the Tenants, or make an application claiming against them had not started, and the provisions of section 38(6) of the Act whereby the deposits may be doubled do not apply in this case.

As I have made a payment order in favour of the Landlord under section 67 of the Act that exceeds the Tenants' security deposit, I authorize the Landlord to retain it, plus interest, in partial 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 \$7.36 using the Residential Tenancy Branch interest calculator using today's date.

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

As I find elements of both Applications were successful, both parties are entitled to recover the filing fee, but I make no orders under section 72(1) of the Act and offset the amounts against each other.

Conclusion

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants as soon as possible. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

| Item | Amount |
|---------------------------------------|-------------------|
| Recovery of incentives | \$1,912.50 |
| Liquidated damages | \$1,662.50 |
| Less: Tenants' compensation | (\$300.00) |
| Less: security deposit, plus interest | (\$1,669.86) |
| Total | \$1,605.14 |

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: November 17, 2025

 Residential Tenancy Branch