Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDCL-S, LRSD, FFL / MNSDS-DR, FFT

Introduction

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

In their Application the Landlord seeks:

- Compensation of $1,985.70 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 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:

- An order for the Landlord to return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlord 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 Packages 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 – Resolution of Claims

Three of the five claims brought in the Landlord's Application related to unpaid utilities. The total amount sought under these claims was $147.60. It was undisputed that since the Landlord's Application was submitted, the Tenants had made payment regarding the utilities. The Landlord indicated the claims were no longer a live issue and were fully resolved. Given the claims were moot by the time the hearing took place, I amended the Application to remove them.

Issues to be Decided

- Is the Landlord entitled to the requested compensation?
- Can the Landlord retain the Tenants' security deposit? If not, are the Tenants entitled to its return?
- Can either party 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 that the tenancy began on February 8, 2025 with monthly rent of $1,700.00 due on the first day of the month. When the tenancy began, the residential property was owned by a previous landlord, a numbered company. The Landlord took ownership on or around June 29, 2025. The Tenants paid a security deposit of $850.00 on January 28, 2025, which the Landlord still holds. A written tenancy agreement was signed and a copy was provided as evidence. The Tenants vacated the rental unit before October 1, 2025.

The Landlord's claims

On September 2, 2025, the Tenants had indicated through a verbal conversation with the Landlord that they were actively looking for a new residence. On September 4, the Tenants provided verbal notice to the Landlord in person, indicating they would be vacating the rental unit by the end of the month. No written notice was provided.

The Landlord affirmed that prior to September, there had been hints from the Tenants that they may be looking to move elsewhere, but nothing was clear until September 4, 2025.

The Landlord testified that when they became aware the Tenants intended to vacate by the end of September 2025, they advertised the rental unit online, seeking a tenant to begin a tenancy from October 1, which they were unable to do. The Tenants also posted the rental unit online. The Landlord affirmed they found a new tenant who started a tenancy from November 1, 2025 paying rent of $1,650.00.

Whilst it was acknowledged by the Landlord that the Tenants provided contact details of three prospective tenants, these potential leads did not come to fruition as there was either no response, the party wanted a tenancy to begin as late as December 2025, and when the issue of a security deposit was discussed, there was no reply.

The Landlord seeks to recover the $1,700.00 in lost rent for October 2025, as well as costs of $138.10 for increasing the profile of their postings on Facebook.

It was acknowledged that the written tenancy agreement provides for a fixed term tenancy set to run to August 31, 2026, which the Tenants believed was a clerical error and should have ended in 2025 instead. Additionally, there is a liquidated damages clause in the addendum to the tenancy agreement, which the Landlord did not wish to enforce. The Landlord also did not seek to claim the shortfall in rental income for the remainder of the fixed term.

The Tenants' response

The length of the fixed term was a clerical error, which they sought to address with the previous owner once it was discovered. It was the Tenants' position that the intention going into the tenancy, was for the fixed term to be for six months only.

It was accepted that no written notice was given to the Landlord, but the notion the first mention of the Tenants vacating the rental unit being on September 4, 2025 was disputed. The Tenants affirmed that they had given verbal notice to the Landlord towards the end of August and were not aware that it was a requirement to give written notice when ending a tenancy.

The Tenants also argued that there was no absolute requirement for the Landlord to pay for advertising on Facebook. The took the position that their posting on the same platform, which was done with no cost, generated significant interest, with fourteen people attending to view the rental unit and three parties registering their interest, whose details were then passed on to the Landlord. From this, the Tenants argued that the Landlord unreasonably rejected potential tenants and failed to mitigate the loss.

The Tenants' claim

It was undisputed that the Tenants provided their forwarding address in writing to the Landlord on the approved Residential Tenancy Branch form #47, dated September 29, 2025. The Landlord acknowledged receipt of the Tenants' forwarding address on October 1.

It was also undisputed that there was no condition inspection report prepared at either the start or end of the tenancy.

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.

Is the Landlord 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. In this case, to prove a loss, the Landlord 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 Tenants 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 Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord takes the position that the Tenants did not provide sufficient notice to end the tenancy, and this resulted in a loss of rent for October 2025. The Tenants dispute this, arguing sufficient notice was provided and that the tenancy was on a month-to-month basis at this time, despite the provisions of the written tenancy agreement.

Section 45(1) of the Act states that a tenant may end a month-to-month tenancy by giving notice that is effective on a date that is:

- Not earlier than one month after the date the landlord receives the notice; and
- The day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(2) of the Act sets out how a tenant may end a fixed term tenancy, and states that a tenant's notice must not be earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 45(4) of the Act states that a tenant's written notice must comply with section 52 of the Act which establishes that in order to be effective, among other things, a notice to end a tenancy must be in writing and must state the effective date of the notice.

Whilst it was undisputed that the written tenancy agreement provides for a fixed term tenancy ending on August 31, 2026, the parties took conflicting stances on whether this had been the intention of the Tenants and the previous landlord when the tenancy was formed. The Tenants submitted that there was a clerical error and the year was incorrect.

Overall, I find this dispute does not turn on whether the tenancy was on a month-to-month basis or a fixed term when it ended. This is because I find that either way, the Landlord has established the Tenants provided insufficient notice to end the tenancy, and breached section 45 of the Act.

As noted above, to be effective a tenant's notice must be in writing. It is undisputed the Tenants did not provide written notice to end this tenancy to the Landlord at any stage. Even if the Tenants' position that they gave verbal notice to the Landlord in person at some point in August 2025 was accepted, this would still be in breach of section 45 of the Act.

On balance, I find it more likely than not that the first indication from the Tenants that they were vacating the rental unit on a clearly specified date came in September 2025. Therefore, the effective date of the notice - even if it had complied with section 52 of the Act – would have been October 31.

Whilst it was undisputed there had been mention of the Tenants vacating at some point from July onwards, I find there was no clear date mentioned until September, as noted above. In reaching this decision I give significant weight to the lack of any mention of an end to tenancy in the written records of communication provided as evidence by the parties. Even on September 2, the Tenants are seen to focus on the status of the tenancy i.e. whether it is a month-to-month or fixed term, rather than refer to any end of the tenancy, which would be expected if indeed it had already been discussed as alleged.

I also found the testimony of the Landlord on the issue to carry more weight than that of the Tenants. I found the Landlord's testimony was detailed and consistent, whilst the Tenants' had a tenancy towards vagueness. I find the Landlord's testimony is also supported by the written evidence which is more in keeping with their position on the matter, as addressed above. I reiterate, even if the Tenants' position was accepted here, their notice is non-compliant with section 52 of the Act as it is not in writing. I find this is not a case where perhaps the Landlord has accepted the notice, and I am not prepared to explore an order under section 68 of the Act that the Tenants' notice was complaint with the Act, despite its issues.

From the above, I find the Landlord has established a breach of the Act on the Tenants' part and that a loss of rent for the month of October 2025 was incurred. I also find the Landlord took sufficient steps to mitigate the loss. The records of payments to Facebook are indicative of measures taken to increase the profile of their posting with the ultimate goal of finding a tenant sooner.

Though it was argued by the Tenants that the Landlord unreasonably rejected suitable tenants and in essence allowed the loss to happen, I find insufficient evidence to

support this notion. Further, I find the Tenants' evidence – either oral or written – did not indicate with any clarity that the three prospective tenants they sourced were interested in beginning a tenancy from October 1, 2025.

Based on the above, I grant the Landlord's Application and issue a payment order for $1,838.10 in their favour. This is comprised of $1,700.00 for the rental loss for October 2025 and the $138.10 paid to Facebook.

Can the Landlord retain the Tenants' security deposit? If not, are the Tenants entitled to its 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.

I find the tenancy ended on September 30, 2025 and the Tenants provided their forwarding address in writing to the Landlord on September 29. Based on the Landlord's testimony, I find they received the address on October 1. The Landlord submitted their Application on October 2. Given this, the Landlord has applied within the fifteen-day timeframe set out in section 38(1) of the Act.

Though the Landlord has extinguished their right to claim against the security deposit for damages under section 24(2) of the Act by failing to prepare a condition inspection report, they retain the right to claim for other losses such as those relating to lost rental income, as the Landlord has done in this case. The definition of "security deposit" set out in section 1 of the Act makes it clear the deposit is held as security for any liability or obligation of the tenant respecting the residential property. Because of this, the doubling provisions of section 38(6) of the Act do not apply here. Had the Landlord claimed only for damage to the rental unit, the security deposit would have been doubled.

As I have made a payment order in favour of the Landlord, as outlined previously in this Decision, I authorize the Landlord to retain the Tenants' security deposit, plus interest,

in partial satisfaction of the payment order under section 72(2)(b) of the Act. I dismiss the Tenants' claim for its return without leave to reply.

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 security deposit was calculated as $7.54 using the Residential Tenancy Branch interest calculator using today's date.

Can either party recover the filing fee for their Applications?

As the Landlord was successful in their Application, I find they are entitled to recover the $100.00 filing fee from the Tenants under section 72(1) of the Act. As the Tenants were unsuccessful, they must bear the filing fee for their Application.

Conclusion

The Landlord's Application is granted. The Tenants' Application is dismissed without leave to reapply.

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**
Rent for October 2025	$1,700.00
Facebook costs	$138.10
Filing fee	$100.00
Less: security deposit, plus interest	($857.54)
Total	**$1,080.56**

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: January 07, 2026

Residential Tenancy Branch