Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes Landlord: MNDCL, FFL
Tenants: MNSD, FFT

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenants' cross application under the Act for:

1. An Order for the return of part or all of the security deposit under section 38 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Property manager LT, community manager JB attended the hearing for the Landlord.

Tenant WH, Tenant CJ, legal counsel KB attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and evidence

The Landlord confirmed that they served the Tenants with their Proceeding Package for this hearing by using a permitted email address for service purposes on October 22, 2025. The Landlord uploaded a proof of service form #RTB-55 and a copy of the read receipt for the email sent attesting to this service. The Tenants confirmed its receipt.

I find that the Tenants were deemed served with the Proceeding Package on October 25, 2025, in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation* (Regulation).

The Landlord served their evidence to the Tenants by registered mail on December 30, 2025. The Landlord uploaded a proof of service form #RTB-55 and the Canada Post receipts with tracking numbers attesting to this service.

The Tenants confirmed receipt of the Landlord's evidence on January 6, 2026. The Tenants stated that the Landlord's evidence was received late and past their evidence deadline date. The Tenants confirmed that they were able to review all the Landlord's evidence prior to the hearing date and were prepared to respond to it. The Tenants submitted that the late service impacted their ability to adequately respond to the Landlord's evidence. In accordance with Rule 3.12 of the Residential Tenancy Branch (RTB) Rules of Procedure, they ask that the Landlord's evidence be excluded or given less weight in my analysis.

The Tenants confirmed that they served the Landlord with their Proceeding Package and evidence by email on December 3, 2025. The Tenants uploaded a screenshot for the email sent attesting to this service. The Landlord confirmed its receipt.

I find that the Landlord was deemed served with the Proceeding Package and evidence on December 6, 2025, in accordance with sections 43(2) and 44 of the Regulation. The Landlord confirmed that digital evidence served by the Tenants was accessible to them in accordance with Rule 3.10.5 of the RTB Rules of Procedure.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed?
2. Is the Landlord entitled to recovery of the application filing fee?

Tenants:

1. Are the Tenants entitled to an Order for the return of part or all of the security deposit?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2025. The Landlord allowed the Tenants an early move in for July 9, 2025. The fixed term was to end on July 31, 2026. Monthly rent was $4,295.00 payable on the first day of each month. A security deposit of $2,147.50 was collected at the start of the tenancy. The Landlord returned $1,649.96 to the Tenants on August 1, 2025, and $500.00 on August 6, 2025 for the full security deposit plus interest.

The Landlord made an application for dispute resolution for $12,885.00 (three months rent) for an early end of the fixed term tenancy, and $500.00 for liquidated damages on October 17, 2025. The liquidated damages claim was only introduced at the hearing and the Tenants disputed that the application could be amended including this claim.

The parties agreed that:

- The Tenants vacated the rental unit on July 16, 2025;
- The Tenants provided their forwarding address to the Landlord in writing on the move-out condition inspection report on July 16, 2025;
- The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy;
- The Tenants did not agree that the Landlord could keep some or all of the security deposit at the end of the tenancy;
- The parties participated in a move-in condition inspection on July 8, 2025, and the Landlord provided the Tenants with a carbon copy of the move-in condition inspection report personally at the end of the inspection; and,
- The parties participated in a move-out condition inspection on July 16, 2025, and the Landlord provided the Tenants with a carbon copy of the move-in condition inspection report personally at the end of the inspection.

The Tenants notified the Landlord about lighting and privacy deficiencies in the rental unit on July 9, 2025 by telephone. The Tenants followed up their habitability concerns with an email after the telephone call. The Tenants requested a mutual agreement to end the tenancy early due to the rental unit differing from when it was presented to them. The Tenants' list of deficiencies included:

Below is a detailed summary of our concerns:

- The unit was shown with additional lighting installed, which was removed before move-in. This concealed the extreme lack of natural light. We now require lamps on at all times, making the space feel dim and claustrophobic, and causing us to incur additional unknown electricity costs.
- Blinds cannot be opened to improve lighting without fully sacrificing privacy, leaving the interior completely exposed to surrounding foot and vehicle traffic. The blinds do not effectively block street light at night disrupting our ability to sleep well and we would need to incur further costs to remedy this. Additionally, the privacy hedge is unkempt and inadequate.
- This fundamental mismatch in how the space feels and functions is already seriously affecting our mental health and ability to live comfortably, and we cannot fathom the cumulative effect on both of our health.
- Persistent foul smell in the bathroom. Based on our discussion with Jesse today this has been an ongoing issue which prior solutions have not resolved.
- Flies present indoors, which raises hygiene concerns, primarily in the kitchen area.
- Dryer is faulty, producing a very loud disruptive noise and the washing machine is musty and malfunctioning: it became stuck during a cycle, clothes were soaked, and it won't drain or spin, leaving dirty water in the barrel. During the showing we were told that these appliances would be replaced, but we were not informed that they are not currently functioning. At present we are unable to do laundry and will have to incur extra costs.
- Dishwasher is extremely old and the refrigerator seems badly dented.
- The waste collection is located directly outside our bedroom windows causing morning noise and disruption which was not communicated to us before signing the lease and after we made it clear that we work from home 3 days per week.
- An industrial loading dock in the underground garage is directly adjacent to our unit with loud banging that rattles throughout the entire unit. Vehicle activity starts early in the morning.
- On the evening of July 8 we were woken up repeatedly throughout the night by rain pounding on the metal overhang outside the bedroom.
- We've been disturbed by stomping sounds from the upstairs unit, including at 11:00pm, 1:00am and 7:00am. We understand that between 11:00pm and 7:00pm may be a reasonable period for noise, but 1:00am is unacceptable.
- On July 8 at 8:45pm, three loud, intoxicated young men were drinking at the pool, leaving with beer cans. I reported the issue to the on-site security guard who had arrived just after they left.
- The front door lock feels insufficient for a ground level unit facing the street with only one lock and no deadbolt.
- The area surrounding the pool also had used band-aids and trash, which is not in line with the standard of cleanliness or safety we expected, and poses a health safety risk.

The Tenants wrote that the issues went beyond minor annoyances, and they amounted to a serious breach of quiet enjoyment, habitability, and good faith under the Act. The Tenants sought to terminate the lease by mutual agreement, effective on or before August 10, 2025, and they requested the return of their security deposit less customary cleaning fees.

The Tenants did not provide a reasonable deadline to address the issues noted in their July 9, 2025 email.

The Landlord was not in a position to accept a mutual agreement to end the tenancy. The Landlord suggested a lease assignment but stated that prospective tenants would have to go through the Landlord's standard application and approval processes.

The Landlord expected delivery of new laundry facilities on July 22, 2025.

The Landlord submitted as the rental unit had been empty since February 2025, no one had been using the shower, so water had evaporated from the p-trap in the plumbing lines, and it is common that smells would come out of the plumbing when dry. The Landlord submitted that this was easily fixed if water was allowed to be run periodically. The Landlord did not see any drain flies in the rental unit.

The Landlord agreed that the lighting in the rental unit was minimal, so the unit appeared dark. The rental unit faces south, so does not get much natural lighting. The Landlord was agreeable to leave the floor lamps to remedy the lighting problem until the Tenants had gotten their own lighting fixtures. The bedrooms did not include ceiling

lights. The Landlord said that changing to LED lighting upgrades was in the future works for the rental units.

The Landlord stated the loudness around the rental unit was evident when the Tenants came to view the rental unit. A street runs in the front of the rental unit, and if these noises did not suit the Tenants, they should not have signed the tenancy agreement.

The Landlord confirmed in the hearing that the hedges beside the rental unit were planned to be replaced, and have been replaced, so this issue is now moot.

The Landlord stated that the Tenants moved in for one day and did not give the Landlord an opportunity to fix the issues the Tenants claim are material breaches of the tenancy agreement. The Landlord argued that none of the noted deficiencies were that egregious that the Tenants had to move out immediately.

The Landlord held several viewings dated from July 16, 2025 to September 10, 2025. The Landlord received an acceptable application on September 16, 2025 that was approved on September 19, 2025. This tenancy began on November 1, 2025. There is no indication that the rent amount sought was reduced or otherwise adjusted in the Landlord's prospective tenant search.

The Landlord claims for unpaid rent from August 1, 2025 to October 31, 2025.

The Landlord submitted because rent was paid to the end of July 2025, that July 31, 2025 was the end date of the tenancy.

The Tenants seek the return of double their security deposit under section 38(6) of the Act. The Tenants completed the move-out condition inspection with the Landlord on July 16, 2025 and they provided their forwarding address in writing on the move-out condition inspection report. The Tenants submitted that all keys and fobs were returned to the Landlord on July 16, 2025 and they no longer had access to the rental unit. The Tenants submitted that the tenancy ended on July 16, 2025.

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. The onus to prove their case is on the person making the claim.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) 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, the landlord must either repay any security deposit or make an application for dispute resolution claiming against the security deposit.

The Tenants sent the Landlord an email on July 9, 2025 that they wanted to mutually agree that the tenancy had ended. The Landlord did not agree. The Tenants vacated the rental unit on July 10, 2025. The parties completed the move-out condition inspection on July 16, 2025 and the Tenants returned all keys and fobs in their possession to the Landlord.

I accept the testimonies of the parties and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended July 16, 2025 because the Tenants vacated the rental unit under section 44(1)(d) of the Act.
- The Tenants' forwarding address was provided to the Landlord in writing on July 16, 2025 on the move-out condition inspection report.

July 16, 2025 is the relevant date for the purposes of section 38(1) of the Act. The Landlord had 15 days from July 16, 2025 to repay the security deposit in full or file a claim with the RTB against the security deposit.

I find the Landlord did not make a claim against the security deposit within the 15 days from July 16, 2025. I find the Landlord repaid the security deposit plus interest by August 6, 2025 which was beyond July 31, 2025; therefore, the Landlord is not

permitted to claim against the security deposit and must return double the security deposit to the Tenants under section 38(6) of the Act. The Landlord has returned the security deposit plus the interest, but the Tenants are entitled to the doubling portion, so I grant the Tenants monetary compensation totaling **$2,147.50**.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement?

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:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and,
- 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 claims for unpaid rent in the fixed term tenancy from August 1, 2025 to October 31, 2025.

The Tenants submitted that the Landlord breached material terms of the tenancy agreement, and they were entitled to end the tenancy agreement early. The Tenants submitted an email that due to several breaches of quiet enjoyment and other breaches under section 32(1) of the Act such as:

- broken laundry facilities;
- sewer gas odours emanating from the hallway bathroom and the kitchen, and a drain fly infestation;
- lighting misrepresentation in the rental unit; and,
- excessive noise outside the Tenants' rental unit,

the Tenants are entitled to end the tenancy early.

Residential Tenancy Policy Guideline 8 provides a list of what a section 45(3) notice must state. The written notice of the alleged breach should inform the other party that:

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

I find the Tenants' July 9, 2025 email listed several issues they claim were problems. I find the list provided by the Tenants does not definitively set out that these problems are breaches of material terms of the tenancy agreement. I find the Tenants did not provide the Landlord with a reasonable deadline, or any deadline, to fix the issues which were problems for the Tenants. I find the Tenants have not proven that the Landlord failed to comply with a material term of the tenancy agreement and failed to correct the situation within a reasonable period, as no deadline was given, after the Tenants provided the notice.

I find that the Tenants' notice does not satisfy section 45(3) of the Act, and the Tenants are not entitled to end the tenancy after this email notice.

Further, I find the Landlord has not proven they took any steps to mitigate their rental income losses as the Landlord did not provide any evidence of mitigation, such as a reduction in asking rent for the rental unit. I find, within at least one month, the Landlord should have implemented some mitigation strategies to minimize their rental income losses. They did not. I find the Landlord is entitled to one month's rental income loss, and I grant the Landlord monetary compensation totaling **$4,295.00**.

Are the parties entitled to recover their application filing fees?

I find both parties are successful in their applications, and as granting recovery of application filing fees is discretionary under section 72(1) of the Act, I do not grant them recovery of their application filing fees for their claims. Each party must bear the cost of their application filing fees in this matter.

The Landlord's monetary claim is calculated as $4,295.00 - $2,147.50 = $2,147.50.

Conclusion

I grant the Landlord a Monetary Order in the amount of **$2,147.50**, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

Each party must bear the cost of their application filing fees in this matter.

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: February 18, 2026

Residential Tenancy Branch