



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlord: MNDLS FFL
For the tenants: MNSDB-DR FFT

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act).

The landlords applied for the following:

1. \$1,311.45 for damages,
2. Retain security deposit and pet damage deposit towards any amount owed,
3. \$100 filing fee.

The tenants applied for the following:

1. \$2,050 for security deposit and pet damage deposit return,
2. \$100 filing fee.

The parties attended the teleconference hearing and gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Regarding service, the landlords confirmed that they had not been served with the tenants' application and the tenants were unable to provide evidence of service. Therefore, I dismiss the tenants' entire application with leave to reapply, due to a service issue. I do not grant the filing fee as a result.

The hearing continued with the landlords' application only.

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Has the landlord provided sufficient evidence for their monetary claim?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- What should happen to the landlords' filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 20, 2020, and converted to a month-to-month tenancy after November 30, 2021. Monthly rent was \$1,950 per month and was due on the first day of each month. The tenants paid a security deposit of \$975 and a pet damage deposit of \$975 at the start of the tenancy, which the landlord continues to hold. I will refer to the deposits as combined deposits of \$1,950.

The landlord has claimed \$1,411.45 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Parkade gate repair cost	\$1,311.45
2. Filing fee	\$100
TOTAL	\$1,411.45

The landlords testified that on January 4, 2022, the tenants' vehicle drove into the garage gate resulting in damage that cost \$1,311.45 to repair. The landlords also

submitted photo and video evidence showing the tenant's vehicle damaging the garage gate. In addition, the landlords submitted the chargeback letter from the Strata Corporation indicating the amount of \$1,311.45 owing for the repairs.

The tenant did not deny damaging the garage gate but blames the building for not maintaining the driveway entrance to the garage by removing all of the snow.

The landlord has claimed against the tenants' combined deposits towards the \$1,311.45 garage door damage. Submitted in evidence was a document signed by the tenant authorizing the agent to hold the deposits in trust until there is a resolution to the garage gate issue, dated April 30, 2022. The tenants' agent stated their father did not know what they were signing, which I will address further below.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Firstly, I will address the issue raised by the tenant regarding their father signing something they did not understand they were signing. I find this is a lack of reasonable due diligence and I afford that no weight in my decision as a result. In the future, the tenant should not sign anything if they do not understand what it is they are signing. When they do, contract law applies, and the contract is legally binding.

I have carefully reviewed the photo and video evidence, the amount claimed and the tenant's response. I find the tenant is fully responsible for the damage they caused to the parking garage gate and owe the landlord the full amount of \$1,311.45 as a result. I find that there is an obvious risk when driving while there is snow outside/winter conditions and that the tenant accepted that risk and is responsible for the resulting damage. As the landlord's application was successful, I also grant the landlord the \$100 filing fee under section 72 of the Act. I find the total claim is \$1,411.45 as a result.

I make no finding regarding the building being responsible for failure to remove snow from the garage access driveway, as I find that issue it is not related to the claim before me.

Pursuant to section 38 of the Act, I will now address the combined deposits of \$1,950, which I find have accrued \$10.63 in interest under the Act. Therefore, I find the landlord is holding a total of \$1,960.63 in combined deposits including interest. I offset the landlords monetary claim of **\$1,411.45** from the combined deposits including interest of

\$1,960.63 in full satisfaction of the landlord's monetary claim. I grant the tenants a monetary order for the balance of their combined security deposit including interest pursuant to section 67 of the Act in the amount of \$549.18.

Conclusion

The landlord's claim is fully successful. The tenants' claim was dismissed with leave to reapply due to a service issue.

The landlord was granted the filing fee. The tenant was not granted the filing fee due to the service issue.

The landlords' claim of \$1,411.45 has been offset from the tenants' combined deposits of \$1,960.63, which includes interest. The tenants have been granted a monetary order pursuant to section 67 of the Act for their combined deposits plus interest balance owing by the landlords to the tenant of \$549.18. Should the landlord fail to pay that amount to the tenants, the monetary order must be served on the landlords by the tenants. The monetary order may then be filed in the British Columbia Provincial Court, Small Claims Division.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlords, if necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2023

Residential Tenancy Branch