



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNR-S, FF

### Introduction

This hearing convened as a result of the landlords' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlords' agent (agent) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence and the tenant confirmed receipt of the landlord's application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants for unpaid rent, to keep the security deposit in partial satisfaction of a monetary award, and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on March 1, 2022, for a fixed-term agreement through February 23, 2023, monthly rent of \$4,400 and a security deposit of \$2,200 being paid by the tenants. The parties agreed the tenancy ended on June 30, 2022, when the tenants vacated the rental unit. The landlords have retained the tenants' security deposit. Filed in evidence was the written tenancy agreement.

The landlord's claim is listed under the section of the application for unpaid rent. The landlord wrote the following in their application:

*The tenant(s) agreed that due to breaking their lease early they would compensate the landlords \$6600 for the month of July. This was agreed upon between the landlords and tenants at the time the mutual agreement was signed. The tenants have not paid the landlords the outstanding balance, and have stopped communicating with our agency. The owners are requesting that the SD be held against the amount, and that they can receive a monetary order for the balance.*

[Reproduced as written]

The agent submitted that the parties signed a Mutual Agreement to end the tenancy on June 30, 2023. The agent submitted, in exchange for signing the Mutual Agreement, the tenants agreed to pay the landlords the amount of \$6,600, according to a separate, signed document (document) on the agent's letterhead, dated June 25, 2022. In this document, the tenants agreed to pay a penalty equal to 1.5 months rent, or \$6,600 and the landlords agreed not to charge the tenants additional payments even if a new qualified tenant has not been secured come August 1<sup>st</sup>, 2022, according to the agent.

Filed in evidence was the signed, undated Mutual Agreement on the standard RTB form and the document.

In response, the tenant submitted they did not understand what they were signing, but they had told the landlords they could stay an extra month. The tenant submitted they agreed to the document as they thought it would help the landlords in finding new tenants after they vacated. Instead, they learned that the landlords moved in the rental unit right after they moved out.

The tenant explained that they only decided to vacate as tenant AP's father was diagnosed with MS and they had to find suitable accommodation for him. They offered to pay another month, and the landlords said "no".

The tenants submitted a written statement from the neighbours from the residential property, photos, and a written explanation.

The agent confirmed that the landlords moved in right away as the owners decided they wanted to use their property for a couple of months before re-renting.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, I find the landlords' monetary claim for unpaid rent is not based on a breach of the Act or tenancy agreement by the tenants. I find the landlords' application relates to a request that I order the performance of the terms of a separate document signed by the parties where the tenants agreed to a penalty in the amount of one month's rent and liquidated damages. The only time a penalty is allowed under the Act is for administrative penalties. Section 5 of the Act states that landlords and tenants may not contract outside the Act and any attempt to do so is of no effect.

Additionally, liquidated damages are specifically not allowed if they are considered a penalty according to Tenancy Policy Guideline 4.

I also considered the Mutual Agreement to End a Tenancy form signed by the parties. The Mutual Agreement states that, *“By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s)”*.

This document ended the tenancy at 1:00 pm on June 30, 2022, by mutual agreement.

If this had been a true claim for unpaid rent due to the break of a fixed-term agreement, the landlord would have had to submit sufficient evidence to prove they did whatever was reasonable to minimize the loss, which includes advertising the rental unit for new tenants immediately upon receiving the tenants’ notice to vacate. This was not the landlords’ claim.

Overall, I find the landlords’ claim relates to enforcement of a separate, signed document and is not a residential tenancy matter.

For these reasons, I find I do not have jurisdiction to decide this matter as I find it is not a dispute under the Act and as a result, I **dismiss** the landlords’ application, without leave to reapply.

As I have dismissed the landlords’ application in which they claimed against the tenants’ security deposit, I find the tenants’ security deposit must be returned. Pursuant to section 62(3) of the Act, I **order** the landlords to return the tenants’ security deposit of \$2,200, plus interest of \$12.24 immediately.

To give effect to this order, I grant and issue the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$2,212.24.

Should the landlords fail to pay the tenants this amount without delay, the monetary order must be served upon the landlords for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application for monetary compensation is dismissed, without leave to reapply.

The landlord is ordered to return the tenants' security deposit of \$2,200, plus interest of \$12.24, immediately, and the tenants are granted a monetary order in the amount of the \$2,212.24, in the event the landlords do not comply with this order.

This decision 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 14, 2023

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Residential Tenancy Branch