



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).

The Landlords' application for:

- Compensation in the amount of \$8,600.00 for monetary loss or other money owed, and to retain the security deposit.
- Reimbursement of the filing fee.

And the Tenants' application for:

- Return of security deposit that Landlords are retaining without cause.
- Reimbursement of the filing fee.

Tenants IB and SB attended the hearing.

Landlords AM and AM2 attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

As both parties confirmed service of the Proceeding Packages and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

### **Issue(s) to be Decided**

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested? If not, are the Tenants entitled to the return of the security deposit?

Are the Landlords entitled to recover the filing fee?

Are the Tenants entitled to recover the filing fee?

### **Background and Evidence**

Evidence was provided that the fixed-term tenancy started on July 15, 2022, with the end of tenancy date of July 14, 2023. The monthly rent was \$4,300.00 to be paid on the 15<sup>th</sup> day of each month. The Tenants paid a security deposit of \$2,150.00, which the Landlords continue to hold in trust. The parties testified that at the end of June 2022 they participated in a walk through for the move in inspection. On March 11, 2023, the parties participated in a walk through for the move out inspection. They did not complete or sign a Condition Inspection Report (CIR).

On February 6, 2023, the Tenants provided to the Landlords written notice to end the tenancy with the effective date of March 14, 2023. The Tenants vacated the rental unit on February 20, 2023 and they provided their forwarding address for the return of the security deposit by sending a letter via registered mail on May 19, 2023. The Tenants filed the letter as part of their documentary evidence.

Landlord IB testified that the Tenancy Agreement (TA) indicates the fixed-term clause, with the effective date of July 14, 2023, and thereafter the tenancy would continue on a month to month basis, or another fixed length of time, unless the Tenants give notice to end tenancy at least one clear month before the end of the term.

IB stated that the Landlords are claiming two months of rent in the amount of \$8,600.00, from March 15, 2023 to May 14, 2023. IB testified that they sold the residential property at the end of May 2023 and are not seeking additional loss.

Tenant AM testified that the Tenants are in agreement that they breached the fixed term of the TA. AM stated that they provided six weeks' notice to end the tenancy. AM testified that they experienced endless problems with the rental unit, to include serious health concerns related to mold in the rental unit.

AM testified that they attempted to help the Landlord mitigate their loss by cooperating with any possible house viewings for re-rental purposes, and by offering to assist with subleasing. AM referred to the above noted communication as filed as part of the Landlords' documentary evidence.

The Tenants stated that the residential property was not relisted until April 2023. IB stated that they were at their vacation property in the Okanagan from February 22, 2023 to March 17, 2023, and took steps to re-rent or list for sale as soon as possible for them. IB stated that they initially considered re-rental of the rental unit, and then decided to sell the residential property.

## **Analysis**

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

### **Are the Landlords 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 Landlords 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 tenant in violation 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.

I accept that the Landlords incurred the loss of rental income as the Tenants vacated the rental unit prior to the end of the fixed term agreement. A fixed term tenancy ends at the end of the term and the Tenants could have exercised other options under the Act to have their issues addressed by the Landlords.

As the Landlords received notice on February 6, 2023, they ought to have taken steps to mitigate loss, but they did not as they were on vacation. I accept the Landlords testimony that they proceeded with such steps as soon as possible for them, and they considered their options and then decided to sell the residential property. I find the Landlords did incur loss of an additional month's rent, in the amount of \$4,300.00, from March 15, 2023 to April 14, 2023.

I do not award the additional month of rent, from April 15, 2023 to May 14, 2023, as the Landlords had time to consider the future months and had the obligation to mitigate or minimize loss. The Tenants made an offer to assist in this regard, and if the Landlords were worried about additional loss of rental income, I would expect them to engage in related discussions and considerations to minimize the loss.

I find the Landlords are entitled to a Monetary Order of **\$4,300.00** for compensation for loss under the Act.

**Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested? If not, are the Tenants entitled to the return of the security deposit?**

Section 38 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

The forwarding address was provided on May 19, 2023, and the Landlord had made their application on May 8, 2023. The Landlord made their application prior to the forwarding address being provided.

The \$2,150.00 security deposit has accrued \$37.72 in interest. Under section 72 of the Act, I allow the Landlords to retain the security deposit of \$2187.72 in partial satisfaction of the monetary award. As such, the Tenants are not entitled to the return of the security deposit.

**Are the Landlords entitled to recover the filing fee?**

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the **\$100.00** filing fee paid for this application under section 72 of the Act.

**Are the Tenants entitled to recover the filing fee?**

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

The Landlords are to retain **\$2,187.72** of the Tenants' security deposit in partial satisfaction of the monetary award. I grant the Landlords a Monetary Order in the amount of **\$2,212.28** under the following terms:

Monetary Issue	Granted Amount
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A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act.	\$4,300.00
Minus security deposit, plus interest	\$2,187.72
Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act.	\$100.00
<b>Total Amount</b>	<b>\$2,212.28</b>

The Landlords are provided with this Order in the above terms 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 and enforced as an Order of that Court.

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*.

Dated: December 6, 2023

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Residential Tenancy Branch