Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

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

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.

The Tenants seek:

- A Monetary Order for the return of their security deposit under sections 38 and 67
  of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord seeks:

- Compensation for damage to the rental unit under section 67 of the Act;
- Authorization to retain all or a portion of the Tenants' security deposit under section 38 of the Act; and
- To recover the cost of the filing fee for their Application from the Tenants under section 72 of the Act.

Parties attended the hearing for both the Tenants and the Landlord. 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 Tenants acknowledged receipt of the Notice of Dispute Resolution Proceeding Package (the Materials) and the Landlord's evidence and no issues with service were raised. Given this, I find these records were served in accordance with sections 88 and 89 of the Act.

The Tenants affirmed they provided the Materials for their Application and the evidence submitted with their Application to the Landlord by Canada Post Xpresspost with signature option on May 29, 2025. The Landlord acknowledged receipt of these records at some time in July – precise date unknown – as they had been on vacation before this. No other issues with service were raised. In these circumstances, I find the Tenant's Materials and evidence submitted with their Application were served as required under sections 88(c) and 89(1)(c) of the Act and were deemed received on June 3, the fifth day after mailing per section 90(a) of the Act.

Where a document is served by registered mail or Xpresspost with signature option, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision and receipt continues to be deemed to have occurred on the fifth day after mailing, as confirmed in Policy Guideline 12 - *Service Provisions.*

The Tenants affirmed they served additional evidence to the Landlord on July 10 by leaving a copy on their doorstep. The Landlord denied receipt of this evidence. Since the evidence was not referred to during the hearing and the subject that the evidence related to was not in dispute, namely, the amount of the security deposit returned to the Tenants and post-tenancy discussions regarding this, I shall not consider it.

Issues to be Decided

- Are the Tenants entitled to the return of their security deposit?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to retain some or all of the Tenants' security deposit?
- Are either party entitled to recover the filing fees 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.

The parties agreed on the following regarding the tenancy:

- The tenancy began on November 1, 2019 and ended on April 30, 2025 after the Tenants gave notice to the Landlord.
- A security deposit of $1,037.50 was paid by the Tenants on October 2, 2019. On May 15, 2025 the Landlord returned $275.13 to the Tenants, and on May 27 a further $274.05 was returned. The Landlord still holds the remainder of the security deposit.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenants participated in inspections of the rental unit at both the start and at the end of the tenancy.
- The Tenants' forwarding address on writing was received by the Landlord on April 30, 2025 when it was given on the end of tenancy condition inspection report.

The Tenants' claim

The Tenants seek the return of the remainder of the security deposit held by the Landlord, plus double the deposit. They take the position that the Landlord has not obtained their permission to keep the security deposit or claim against it within fifteen days of their forwarding address being received. Further, the end of tenancy condition inspection report, which was completed by the Landlord's Agent, AP, records no basis for the deposit to be retained.

The Landlord affirmed they submitted a previous application claiming against the security deposit, but because they were unfamiliar with Residential Tenancy Branch (the Branch) processes and were away for a period shortly after the application was submitted, they missed the three-day deadline to serve the Materials for their previous application. The Landlord testified they contacted the Branch about this and was informed they could withdraw the application, which they did. The file number for the Landlord's previous application is included on the front page of this Decision for reference.

The Landlord's claim

Per the Landlord, they were away from the residential property at the time the tenancy ended, so instructed AP to deal with the end of tenancy inspection and the condition inspection report on their behalf.
The Landlord then attended the rental unit on May 10, 2025 to paint and prepare for the process of finding new tenants. When they opened the curtains of the rental unit and allowed more natural light into the suite, they noticed a 42-inch scratch in the vinyl flooring, photos of which were provided as evidence.

The Landlord asked AP about the scratch, and they said it was not seen during the end of tenancy inspection, so was not recorded in the report. The Landlord indicated their belief that the scratch was caused when the Tenants were moving furniture out of the rental unit and that the scratch was not seen on April 30, because of the level of lighting at the time of the inspection.

The Landlord testified that only AP had access to the rental unit between April 30 and May 10. Whilst the issue had been discussed with the Tenants, they had disputed responsibility and argued the Landlord themselves may have damaged the flooring based on their mention of moving equipment and painting materials into the rental unit. The Landlord disputed the painting equipment they used would have caused the damage.

The Landlord seeks to recover $540.99 for the costs associated with replacing damaged flooring. An invoice for the work was provided as evidence. The flooring was installed in 2016 and is recorded as in good condition at the start of the tenancy.

The Tenants disputed the floor damage was caused during the tenancy and reiterated there was no mention of it in the condition inspection report. They argued that as AP was very detail-orientated in the inspection, had it been there it would have been noted.

There are some slight differences in the reports submitted by the parties. The Tenants affirmed that this was because two photocopies were taken to the inspection by AP and each party filled out their own copy.

The Tenants indicated they were unsure what happened in the rental unit after they vacated and when the scratch was purportedly noticed and also reiterated the flooring had been in use for nine years in any case.

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.

Claims relating to the security deposit

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, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Sections 24 and 36 of the Act also state that a tenant extinguishes their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given two opportunities to do so, unless the tenant has abandoned the rental unit.

Sections 24 and 36 of the Act also states that a landlord's right to claim against the security deposit for damage to the residential property is extinguished if they do not provide two opportunities to inspect the rental unit at the start and end of the tenancy and prepare a condition report in accordance with the Regulation.

Section 38(6) of the Act states that if a landlord does not comply with 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.

It was undisputed that the tenancy ended on April 30, 2025 and the Landlord received the Tenant's forwarding address on the same day, when it was provided on the move-

out condition inspection report. It was also undisputed that the Tenants did not give their permission for the Landlord to retain some, or all of their security deposit. I also find neither party has extinguished their rights to the deposit owing to a breach of sections 24 or 36 of the Act or that the Landlord had any unpaid monetary awards against the Tenants that would have allowed them to retain the security deposit.

The above means the Landlord would have had to either return the security deposit to the Tenants or make an application for dispute resolution claiming against the security deposit by May 15, 2025.

After reviewing Branch records, I find the Landlord's testimony where they spoke to a previous application being made is correct. The Landlord submitted an application to the Branch on May 15 claiming against the Tenants' security deposit. The Materials for the previous application were given to the Landlord on May 16, with a deadline for service of May 19. Records indicate that following a call to the Branch, the Landlord was informed on May 21 that since the Materials had not being served at that time, they may withdraw the application and resubmit it.

I find no record the Landlord was informed of the likelihood the doubling provisions of section 38(6) of the Act applying if their previous application was withdrawn and a future application was made outside of the fifteen-day timeframe set out in section 38(1) of the Act.

I also find nothing to indicate the Landlord was made aware of the possibility of continuing with their previous application even if the Materials were sent outside of the three-day timeframe established by section 59(3) of the Act. As set out in section O of Policy Guideline - *Service Provisions*, serving outside of the three-day timeframe is not necessarily fatal to an application and provided the respondent had enough time to respond to the dispute, an extension to the period to serve the Materials may be granted under section 66(1) of the Act, which states that the director may extend a time limit established by the Act only in exceptional circumstances. I note that when the Landlord's previous application was withdrawn, the hearing was booked for July 22 – over two months away, so an extension was not out of the question.

The Landlord has not returned the entirety of the security deposit to the Tenants and this Application claiming against it was not submitted within the fifteen days, as it was submitted to the Branch on May 27, 2025. However, the Landlord did comply with the fifteen-day deadline under their previous application. Though this previous application

was withdrawn, I find the Landlord was not informed of the ramifications of this. There does not appear to be any malice or deliberate stall tactics in the Landlord's actions. The Landlord has also returned portions of the security deposit to the Tenants. In these circumstances, I find it justified to extend the timeframe set out in section 38(1) of the Act as I find the Landlord genuinely intended to comply with the statutory timeframe imposed on them and lack of information provided to the Landlord regarding their options and the effects of the withdrawal of the pervious application form exceptional circumstances.

Based on the above, the doubling provisions of section 38(6) of the Act do not apply. The Tenants are entitled to the return of the remainder of their security deposit, plus interest, less any monetary award in favour of the Landlord that are awarded under their claim, though the deposit will not be doubled.

Landlord's claim for damages

Section 32 of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant. Additionally, section 37 of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit undamaged except for reasonable wear and tear.

A tenant is only responsible for damage caused by them, and not for wear and tear, and it is for the Landlord to prove on a balance of probabilities any damage was caused by the Tenants as a starting point for their claims relating to damage to the rental unit.

As set out in section 21 of the *Residential Tenancy Regulation* (the Regulation), a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

It was undisputed the condition inspection report made at the end of the tenancy does not reference the damage to the floor. There were some discrepancies in the copies of the reports provided by the parties which I attribute to two parallel, but apparently not identical, copies being prepared by the Tenants and the Landlord's Agent during the inspection. Ideally, one document would be prepared, then a copy given to the Tenants in accordance with the Regulation to avoid any discrepancies. Given neither copy records any damage to the flooring of the living area in rental unit in either section L or

Z, I find this is not a significant issue as far as the reliability of the reports themselves and there is no question that mention of any damage to the floor is absent.

Whilst the Landlord took the position the damage to the flooring was caused during the tenancy, I find frailties here. As already noted, the end of tenancy report omits mention of the scratches, which are noticeable, per the images provided by the Landlord. I find the Tenants' argument that the Landlord's Agent was mindful of details to be plausible, given they record what appear to be relatively minor issues, such as marks on a closet by the entrance and missing bulbs. I find it more likely than not that were the 42-inch scratches present on April 30, there would be mention of this in the end of tenancy report.

Further, there is a significant amount of time between the time of the inspection – which took place on the final day of the tenancy – and the date the scratches were reported. This opens up the possibility that the scratches came about after the tenancy ended in a manner unrelated to the Tenants.

In these circumstances, I find the Landlord has failed to establish the damage in question occurred during this tenancy due to a breach on the Tenants' part. I therefore dismiss the claim without leave to reapply. I make no payment order in favour of the Landlord, and they are not entitled to retain any amount from the remainder of the Tenants' security deposit.

Filing fees

As the Landlord was not successful in their claim, they must bear the cost of the filing fee for their Application. Their request under section 72 of the Act is dismissed without leave to reapply.

As the Tenants were successful in their Application, under section 72 of the Act, I find they are entitled to recover the cost of the filing fee from the Landlord. I issue a monetary award of $100.00 in their favour accordingly.

Summary

The Tenants are entitled to the return of the remaining portion of their security deposit the Landlord continues to hold, plus interest. The Landlord's claim for damage to the rental unit is dismissed without leave to reapply.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. It was undisputed that the Tenants paid the security deposit of $1,037.50 to the Landlord on October 2, 2019 and that $275.13 was returned to the Tenants on May 15, 2025. At this time, interest of $52.70 had accrued, meaning the Landlord held a total of $1,090.20. After the partial return on May 15, they held $815.07 until May 27, when another $274.05 was returned. A further $0.28 of interest accrued in that time, meaning after May 27, the Landlord held $541.30. As of today's date, another $0.90 in interest has accrued, so the Landlord holds $542.20, which they are ordered to return to the Tenants.

Conclusion

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

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Return of remainder of security deposit, plus interest	$542.20
Filing fee	$100.00
Total	**$642.20**

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: July 29, 2025

Residential Tenancy Branch